The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED 1857.)

Notices to Subscribers and Contributors will be found on page v.

VOL. LXXI. Saturday, June 25, 1927. No. 26

Current Topics.

Publication of Mr. Justice McCardie's Address and Mr. Justice Wright's Lectures.

IT IS SO seldom that the opportunity is offered to us to read the observations and criticisms of our judges made outside the "settled groove" or the "established routine" of the Bench, and upon the substance and historical development of those branches of our law in which they are recognised authorities "in fact" as well as "in law," that we rejoice to be privileged to publish in this, our Special Number, the substance of a Reader's Address and a Public Lecture delivered respectively by Mr. Justice MCCARDIE and Mr. Justice WRIGHT.

Mr. Justice MCCARDIE'S address is on a fascinating subject: "The Law, the Advocate and the Judge"; and the occasion on which it was delivered will remain a memorable one; for it marked the revival of the ancient custom of "reading" at the Bar by which students of the various Inns of Court came to receive instruction in the law. The ancient custom long ago fell into desuetude. We are pleased to understand, however, that it has been revived for good and all, and that such inspiring addresses as that delivered by the last Lent Term Reader at the Middle Temple may be regularly delivered in the course of each term.

The subject of Mr. Justice WRIGHT'S lecture is "The Doctrine of Proximate Cause in Marine Insurance." The lecture, together with another one, entitled "Insurance against War Risks at Sea"—which we hope to publish next week—was recently delivered at the London School of Economics as an advanced lecture under the auspices of the London University School of Law. Those who were privileged to hear these two lectures were unanimous in the welcome which they gave them as authoritative pronouncements on the law relating to two important and extremely difficult subjects.

The Poplar Sucharge Fiasco.

PROLONGED LITIGATION as to the lawfulness of a surcharge in respect of excessive wages, on certain councillors of the metropolitan borough of Poplar, resulted, as is well known, in the decision in April, 1925, of the House of Lords upholding the surcharge. Thereupon the auditor applied to one of the metropolitan magistrates at the Thames Police Court to issue distress warrants against the councillors involved, to recover the amount of the surcharge. The hearing was adjourned from time to time, it being understood that the Minister of Health was considering the question of remission. He purported to remit, and the complaint before the magistrate was withdrawn. But in February last the High Court decided that the Minister had no power to remit, and last week the auditor applied to the magistrate, Mr. CAIRNS, to issue fresh summonses. Mr. CAIRNS held that as the complaint had been withdrawn, he had no power to grant further summonses. If the matter rests there it is an interesting commentary on the ineffectiveness of the law, sought to be removed by the Bill now before Parliament providing for disqualification of persons surcharged for service on local authorities. There are still several technical points of considerable ambiguity which can be argued, if the magistrate's present decision be assailed, but even if it be determined that he ought to proceed, no substantial sum can ever be recovered, and the community will gain nothing but the privilege of paying for the maintenance in prison of defaulting defendants, unless indeed the magistrate, in his discretion, should decide to award one day's imprisonment only.

Stating a Case on Refusal to Commit for Trial.

A RECENT CASE at the Marlborough-street Police Court again raises this interesting question. It is usually considered to have been decided in the negative by *Foss* v. *Best*, 1906, 2 K.B. 105, but a careful consideration of the judgments in that case show that they need not stand in the way of a court which wishes to decide the other way. The only ground necessary to the decision of that case was that the notice required by the statute was not served. The remainder of the judgments is really *obiter*, and rather remarkably *obiter* too. The judgments of both judges make a great point of there being no appeal after acquittal. To begin with, a dismissal under s. 25 of the Indictable Offences Act, 1848, is not an acquittal. In a large number of cases there is nothing to prevent the justices' decision being reversed by a grand jury, on a bill presented direct to them. But, over and above this

consideration, it is the law that a case can be stated on acquittal of either a summary offence or of an indictable offence tried summarily. There have been innumerable such appeals, and in many cases the High Court has directed a conviction. Recently, by s. 20 (1) of the Criminal Justice Act, 1925, Quarter Sessions have been required to state a case either on conviction or acquittal on an appeal from justices. *Foss* v. *Best* being thus out of the way, one has to consider whether committing justices are or are not (for all or some purposes) a court of summary jurisdiction. Without arguing the point at length it is sufficient to say that the decided cases show they are not for all purposes such a court. But the extreme inconvenience of having no appeal on law in the case of a refusal to commit might be met by recognising that they may be a court of summary jurisdiction in some respects, and those who would wish this view to prevail can point to s. 23 of the Criminal Justice Administration Act, 1914, which expressly speaks of committing justices as a court of summary jurisdiction when considering the question of bail. The point is one likely to go to the High Court very soon, as the refusal at Marlborough-street was upon a case of considerable importance. Being in regard to a summary offence which became indictable only on the election of the defendant under s. 17 of the Summary Jurisdiction Act, 1879, probably no bill could be preferred without committal. There is, therefore, no other way of raising the point of law than by seeking a rule from the High Court ordering the statement of a case.

Matrimonial Down Pans.

A WOMAN LIVING at Wood Green might conceivably become as famous in English legal history as the late Mrs. JACKSON, of Clitheroe, if her case was taken up and fought to a finish. In the meanwhile, the local magistrates are stated to be greatly puzzled, and it is hardly surprising. The issue presented to them, as reported, was whether the woman's husband was compelled to maintain her in the face of the fact that she had gone "on strike" against continuing the household duties of cooking and washing. The bench ordered the husband to maintain the child, which presumably had not struck against its family duty of bringing sunshine into the home, but postponed their decision as to the woman. The Summary Jurisdiction (Married Women) Act, 1895, provided that a maintenance order might be made against a husband if he wilfully neglected to provide reasonable maintenance for his wife, and so caused her to leave him (s. 4). The latter condition was repealed by s. 1 (1) of the later Act of 1925, with the proviso that no order made while husband and wife were living together should be enforceable while they continued to do so. The issue remains whether a husband is wilfully neglecting to provide reasonable maintenance for his wife if and while she refuses what a court would surely hold to be the ordinary family services in her station of life. A consistory court in the old days would have soon given such a wife the choice between the altar-steps in a white sheet and the domestic hearth (compare the case of AGNES EDWARDS, No. 298 of Hale's Criminal Cases from the Essex courts, a lady who "*maletractat maritum suum, non præstando sibi obsequia conjugalia prout de jure tenetur*"). In America, too, it has been expressly held that the wife's legal obligation to render family services is co-extensive with the husband's obligation to support her: see *Randall* v. *Randall*, 37 Mich. 563. Our own modern law, however, emasculated by *R.* v. *Jackson*, 1891, 1 Ch. 671, furnishes no such precedents. Perhaps the nearest to throw light on the point is *Jones* v. *Newton and Llandiloes Guardians*, 1920, 3 K.B. 381, in which it was laid down by Lord READING and two other judges that a wife, after an indefinite number of years of wilful desertion, has the right to return home and be maintained by her husband—though it was also held in *Shipman* v. *Shipman*, 1924, 2 Ch. 140, that he has no reciprocal right to live in her house, if he has not one of his own. This case clearly shows that when the wife starts cooking again, her right to maintenance will be absolute. It is indeed arguable on s. 6 of the Act of 1895 that only a woman who has committed adultery has forfeited the right. If so, the House of Emancipation, of which Mrs. JACKSON well and truly laid the first stone, is now complete, and a husband, although burdened with the liability of supporting his wife, has ceased to have any conjugal rights worth mentioning.

"And" for "or" in Art. IV, r. 2 (q), of the Carriage of Goods by Sea Act, 1924.

THE COURT OF APPEAL have confirmed the decision of Mr. Justice MACKINNON in *Brown* v. *Harrison* (*ante*, p. 362) and in *Heyn* v. *Ocean Steamship Co., Ltd.* (*ante*, p. 300), both of which cases raised a similar point as to the construction of para. (*q*) of Art. IV, r. 2, of the Carriage of Goods by Sea Act, 1924. That provision is as follows: "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from . . . (*q*) any other cause arising without the actual fault or privity of the carrier, *or* without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier *nor* the fault or neglect of the agents or servants of the carrier contributed to the loss or damage." One of the questions that was raised in the above cases was whether the carrier could claim the protection of the above provision if he satisfied the court that the loss or damage did not result from his own actual fault or privity, or whether it was necessary for him to go a step further and show also that the loss or damage was not caused by the fault or neglect of his agents or servants. In other words, the question raised was whether "or" in para. (*q*) was to be read conjunctively or disjunctively. The Court of Appeal, affirming MACKINNON, J.'s decision, held that "or" was to be read conjunctively as equivalent to "and." The second point that was also taken on appeal raised the question of the meaning of the expression "management" in Art. IV, r. 2 (*a*), of the Act, whereby neither the carrier nor the ship is made responsible for loss or damage arising from the "act, neglect or default of the master mariner, pilot, or the servants of the carrier in the navigation or in the management of the vessel." In both the above cases goods had been pillaged from the vessels, while they were lying in port for the purpose of discharging their cargoes, by men employed by the stevedores for the purpose of discharging the vessels. The Court of Appeal held, however, affirming the decision of MACKINNON, J., on this point, that the acts of the stevedores' men in pillaging the goods could in no sense be regarded as acts in the "management" of the vessel. The last point that was raised in these cases was that, inasmuch as the stevedores were independent contractors, they could not be regarded as the "agents" or "servants" of the carrier within the meaning of para. (*q*) of Art. IV, r. 2. Although in the report of these cases the Court of Appeal do not appear to have expressly dealt with this point, it seems clear enough that the expression agents and servants in the above para. (*q*) is to be construed in a wide sense, so as to include such persons as stevedores, although they are only independent contractors. This, at any rate, was the view taken by MACKINNON, J., when the case of *Heyn* v. *Ocean Steamship Co., Ltd.* was before him (*ante*, p. 301). The conclusions, therefore, to be drawn from the above cases may briefly be stated as follows:—

(1) The expression "or" in Art. IV, r. 2 (*q*), of the Carriage of Goods by Sea Act, 1924, is to be read conjunctively.

(2) Independent contractors, such as stevedores, are to be regarded as the "agents or servants" of the carrier within the meaning of Art. IV, r. 2 (*q*), *supra*.

(3) The acts of stevedores' men in pillaging the cargo are not acts in the "management" of the vessel within the meaning of Art. IV, r. 2, para. (*a*), of the Carriage of Goods by Sea Act, 1924.

The Law, The Advocate, and The Judge.

(An Address by The Hon. Mr. Justice McCardie.)

Mr. Justice McCardie revived, on Thursday, the 19th ult., in the Middle Temple Hall, the ancient custom of delivering the "Reader's Address." Among those present, were Mr. Alexander Macmorran, M.A., K.C. (the Master Treasurer), Sir Robert McCall, K.C.V.O., K.C., Arthur Powell, K.C., His Honour Judge Sir Alfred Tobin, K.C., Heber Hart, K.C., J. B. Matthews, K.C., Bince Williamson, Stuart Bevan, K.C. and Sir H. Curtis Bennett, K.C. (Masters of the Bench).

Mr. Justice McCardie said: It is my privilege to speak to-night as the Reader of the Middle Temple. I have chosen as the title of my address: "The Law, the Advocate, and the Judge." Each branch of the subject is fraught with memories of the past, and each awakens thought on the problems of the present.

The Middle Temple Hall is, I feel, a venerable but vital symbol of my subject: "The Law, the Advocate, and the Judge." Who can refrain upon this occasion from casting a glance at the spacious and significant landscape of the legal times that have gone by? Who can forget that the past is the secret of the present, and that the future must be built upon the foundations of to-day? We are assembled to-night in a hall, the erection of which was completed when Shakespeare was but eight years old, when Francis Bacon was still at school, and when sixteen years had yet to elapse before the great Armada sailed from Spain for England. Far beyond 1572 there lie the history and the origin of the Middle Temple Society. The Inns of Court had slowly developed from the collegiate institutions of the Middle Ages. The Middle Temple Hall arose in a great period of our national life. How impregnable this noble building has been to the ceaseless surge of time! That man, I hope, is not to be found whose heart does not stir with pride as he stands beneath this roof and whose sense of history is not deepened and enriched as he recalls the records of our past. The Middle Temple gives its message to-night not only to our brethren beyond the seas, not only to the members of recently established seats of learning, but also, and in full measure, to the historic Universities of Oxford and of Cambridge.

Renaissance of an Ancient Office.

To-night marks a most striking incident in our annals. The office of Reader, as you know, was well established by the fifteenth century. It was in 1680 (by order, 25th June, 1680) that public readings were discontinued, although I see that in 1684 Sir William Whitelock gave an isolated lecture (in the nature of a reader's address) in this hall. This is the first time, therefore, for about two and a half centuries, that a Reader has given an address.

May I not describe this evening as marking the renaissance period of the office of Middle Temple Reader? We cannot "Call back yesterday and bid time return," but we can restore as from to-night, with a new outlook and a deeper conception of duty, the practice followed by our predecessors up to the final decades of the seventeenth century.

Master Treasurer, I have referred to the sense of history awakened to-night.

A Shrine of Illustrious Memories.

The Law and the Middle Temple have their biographical and romantic aspects. Upon the records of our society you will find the names of many Lord Chancellors. Amongst them are Edward Hyde, the first Earl of Clarendon, Lord Somers, Lord Cowper, Lord Hardwicke, Lord Eldon, and Lord Westbury. Another and great Lord Chancellor (Lord Finlay) is, we rejoice to think, amongst us still. Upon our records also you will find the names of others famous in the law. Amongst them are Mr. Justice Blackstone (the author of the "Commentaries,"), Chief Justice Erle, Chief Justice Jervis, Sir Alexander Cockburn, C.J., and Lord Lindley.

Famous great statesmen have been of our members, including John Pym, John Hampden, and Edmund Burke (who was admitted on 23rd April, 1747). Burke it was, we recall, who said "The law is a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together."

Distinguished soldiers have been of our company: Sir Henry Havelock (admitted in 1813), and more famous still, Sir Walter Raleigh, who was admitted on 27th February, 1574.

Great advocates we have had from the early centuries to the recent period of my fellow Bencher, Lord Carson. Illustrious names in literature are also on our records, and amongst them are John Evelyn, William Congreve, Henry Fielding, William Cowper, Richard Brinsley Sheridan (admitted on 6th April, 1773), Thomas Moore (admitted on 19th November, 1795), Thomas De Quincey, and—last in mention, but assuredly not least in fame—William Makepeace Thackeray and Charles Dickens. Thackeray became a member of the Inn on 3rd June, 1831. Charles Dickens was admitted on 6th December, 1839, when he had already gained the affection of the English-speaking world by his "Pickwick Papers," his "Oliver Twist," and his "Nicholas Nickleby." At yonder table on the left-hand side of this hall, Dickens and Thackeray not infrequently dined and talked together. How deeply I wish that a Middle Temple Boswell had recorded their conversations.

Time has, indeed, bestowed upon us a great heritage, and the Reader of 1927 can claim, as his successors may also justly claim, that the Middle Temple is for each of us a shrine of illustrious memories. How wonderful the scene if the men of the by-gone centuries could mingle and talk in this hall with the men who are here to-night! The men of the past have done their work and have passed away. Yet, Master Treasurer, how true it is that the life of a great man, be he a lawyer, scientist, statesman or author, does not end with the parting of soul and body. His life is one which continues into the ages to come, a life that posterity will cherish and that time itself will guard.

The Law.

It is in broad outline that I would wish to approach the subject I have taken for this exceptional occasion. To-night I will deal with no technical doctrine. I will analyse no line of decisions, nor discuss the subtleties of jurisprudence. The readers who will follow me in succeeding terms will, I feel sure, deal ably, learnedly and in better fashion than I could achieve, with different aspects of our law.

From time to time it is wise for a lawyer to step aside from his settled grooves and his established routine and look broadly at the matters on which I will now address you. In doing so, I realise the wisdom of the observation of John Stuart Mill that "On all great subjects there is much to be said."

Master Treasurer, it is a profound but sometimes a forgotten truth that the law was made for man and not man for the law. Law, after all, is but a branch (though a great branch indeed) of what is perhaps the widest science of all—the science of sociology. Breadth of outlook should be joined by us with a knowledge of professional doctrine. If this be our ideal, we shall begin to realise more fully the words of Coke when he spoke of "the gladsome light of jurisprudence." Hence, as I reflect upon the first branch of my subject, i.e., "The Law," I ask myself this question: "What is the law and for what does it stand?" What is the significance behind it." This question is vital when we recall that we are living in a period of criticism, of investigation, and of vigorous challenge. Well was it said by Walter Bagehot that: "The characteristic of great nations like the Romans or the English, which have a long history of continuous creation, is that *they may at last fail from not comprehending the great institutions*

they have created." Let us be wise in time! What, then, is the Law? Just as the nation is more than the aggregate of citizens, so the law is, in my view, more than a mere aggregate of statutes and orders and decisions. It is a great unifying and controlling institution placing upon each his duties, giving to each his right and enforcing from each his obligations. The law, it is true, cannot create happiness and content, but it can create in no small measure the conditions which make the achievement of happiness and content possible amongst us. Basically it may be said that—

"There can be no civilisation without order.
There can be no order without law."

The alternative to the reign of law is the chaos of the jungle.

The Law of England, Master Treasurer, has been well described as the great edifice beneath which each one of us takes shelter. The instinctive grasp of this truth by the vast majority of the people of this country gives to Englishmen their respect for the law and makes us at heart, as Walter Bagehot would say, a "reverential" nation. There is one momentous aspect of the matter not to be overlooked if a broad vision be exerted. In many a writer of former days you will find a reference to the laws of nature. Yet see how different are the laws of physical nature to the laws of men! As Professor Gray so well pointed out in his fascinating book on the "Nature and Sources of the Law," the laws of nature are the same whatever be the opinion from time to time of scientists and philosophers. The stars ran the like courses in the days of Ptolemy as in the days of Sir Isaac Newton, and the composition of matter was the same in the days of Aristotle as in the existing era of Sir J. J. Thomson and Sir Oliver Lodge. The physical laws of nature are independent of public opinion, whereas the laws of England to-day are, in substance, public opinion itself. Those who can now mould public opinion can mould the laws that govern our people.

A Tribute to The Common Law.

A subject that might well occupy a future reader would be the contrast between the methods and the policy of the Common Law Judges and the methods and policy of Parliament. The interaction of one with the other is a topic of singular interest, and thinkers, both within and without the law, will recall with gratitude the work of the late Professor Dicey on "Law and Public Opinion." Time does not permit me to review, even briefly, the currents of feeling or policy which have led to past legislation and which have originated the Acts of Parliament described by Walter Bagehot as "those medleys of differing interests—differing motives and conflicting opinions." My own heart, I confess, is ever with the Common Law, though I realise the breadth and wisdom of our Equity jurisprudence. I know that criticism is sometimes directed against the Common Law. I realise that our guiding rule of obedience to precedence may some day need modification. The constant transformation of social, economic and industrial circumstances is ever knocking at the gate of ancient formulas. I know, too, that we have yet to frame a philosophy or a method which will balance the conflicting claims of stability and progress and secure to us a principle of growth. The law must be reasonably certain, but it cannot stand still. Inconsistency, moreover, is sometimes charged against the Common Law. We must, however, never forget the truth so well pointed out by Mr. Justice Wendell Holmes in his book on "The Common Law," "that the life of the law has not been logic but experience." How true that statement is!

Again, complaints are sometimes made of the complexity of the Common Law. In truth, its complexity cannot be denied with regard to many points. But does not that reproach lose its weight—yes, all its weight—when we reflect on the infinite complexity of human life itself and the almost inconceivable intricacy of our social and industrial relations? Whatever its occasional faults may be—still—what an achievement the Common Law of England has been! The history of that Common Law—and Professor Holdsworth has most vividly depicted it—is not the history of war or party strife. It is the history of the development and growth of justice, of duty, of honesty, of care, of the upright fulfilment of obligations.

One only of the many features of Common Law development I may mention is that relating to restraint of trade as between master and servant. The essence of that doctrine, as evolved by the courts, has been the protection of the weaker against the stronger. That is the essence also of other doctrines that have been created by the courts.

It is well to remember what Professor Dicey has pointed out (in his "Law and Opinion") that nine-tenths of our law of contract, and almost the whole of our law of torts still rest upon the Common Law. Many Acts of Parliament, as, e.g., The Sale of Goods Act, 1893, do little more than reproduce the rules originally established by the courts.

Of the Roman law, to which we owe so great a debt, it was said by D'Aguesseau, that "the grand destinies of Rome are not yet accomplished; she reigns throughout the world by her reason after having ceased to reign by her Authority." That was said some 200 years ago by a reverent disciple of the Roman law.

May I mention what was said by Bentham, a hundred or more years ago, of English case law: "Traverse," said he, "the whole continent of Europe, ransack all the libraries belonging to the jurisprudential system of the several political states—and the contents all together—you would not be able to compose a collection of cases equal in variety—in amplitude—in clearness of statement—in a word, all points taken together—of instructiveness, to that which may be seen to be afforded by the collection of English Reports of adjudged cases."

Great, indeed, is the power and significance of law! Napoleon the First once observed, "I shall not go down to posterity by the battles I have fought, but by the codes I have given to France." The warrior realised the ultimate weight of law. When I reflect upon the spread and acceptance of our common law principles throughout the United States and Canada and Australia and New Zealand, may I not say that nothing has left a deeper or more beneficent impression upon the western world than the Common Law of England. Its work can never be undone. Its spirit and its ideals must ever live. If this country were to sink to-morrow beneath the waves, the record of the Common Law of England would stand for ever on the noblest pages of history.

The Advocate.

Master Treasurer, I have paid my tribute to the Common Law. I have paid a brief—far too brief—tribute to the equity system of our country. May I omit to deal with the constitution of our courts of justice? (for time is a pitiless master, even on such an occasion as this), and say a few words, if you will allow me, upon "The Advocate."

I speak of the Bar. I do not, however, forget for a moment that great body of learned and honourable lawyers who form the solicitors' branch of our profession. The position of the advocate should, I think, in view of the drift of events of to-day, be clearly realised by each. That the work of the bar is essential is scarcely to be disputed. Destroy the bar, and you would destroy a bulwark of civil and criminal justice, nay, you would destroy security and liberty itself. As D'Aguesseau said: "The profession of an advocate is as ancient as the magistracy and as necessary as justice." I have always felt that everyone called to the bar should satisfy himself as to the propriety of the practice of the profession to take a brief as readily for the one side as for the other. It is often asked, how can a righteous man accept a brief for a party whose cause is bad or for one apparently guilty of the crime which is charged against him? Unless a member of the bar can give an answer to that question he stands on

the brink of a constant difficulty. Dean Swift somewhat roughly described lawyers as men who proved that white is black or black is white, "according as they are paid."

Doctor Arnold of Rugby and Lord Macaulay somewhat closely approached, in the harshness of their utterance, the language of Dean Swift. The opposite view has been ably put by Paley and Basil Montagu. But upon reflection, I ever come to the conclusion that Dr. Johnson has stated the case for the barrister with satisfactory cogency. The passages in "Boswell's Life," though probably well known, are worth repeating: "I asked him," said Boswell, "whether as a moralist he did not think that the practice of the law, in some degree, hurt the nice feeling of honesty?" Dr. Johnson replied, "Why, no sir, if you act properly." Later Boswell said: "What do you think of supporting a cause which you know to be bad?" Dr. Johnson replied: "Sir, you do not know it to be good or bad until the judge determines it." And the learned Doctor added (upon the legal aspects of a case) "An argument which does not convince yourself, may convince the judge to whom you urge it, and if it does convince him, why then, sir, you are wrong, and he is right. It is his business to judge."

A little later Boswell says: "But, sir, does not affecting a warmth when you have no warmth and appearing to be clearly of one opinion when you are in reality of another opinion, does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life as in the intercourse with his friends?" Dr. Johnson: "No, sir. *Everybody knows you are paid for affecting warmth for your client.*"

The Duties of The Advocate.

Master Treasurer, that, I believe to be the best practical vindication of the rules and methods of the bar. Baron Bramwell, with his robust good sense, put the matter into a sentence when he remarked, "a client is entitled to say to his counsel, 'I want your advocacy, not your judgment. I prefer that of the court:'" *Johnson* v. *Emerson*, 1871, L.R. 6 Ex. p. 367. These words carry an added weight when it is remembered that in criminal cases the question is not so much one of probable guilt as of that convincing *proof* of guilt which is required by the settled law of the land. The view of Dr. Johnson may be well illustrated by the story told of a vigorous and declamatory counsel, who, after completing his statement of the facts, commenced an appeal to the emotions and passions of the jury by saying, "and now, gentlemen I will drop the advocate and assume the man." "No, sir," said the judge, interrupting him, "it is only as an advocate that you are entitled to address the jury—as a *man* you have no right to trouble them." The doubts suggested by Boswell as to the character of the advocate seem to be touched with humour when we know, yes, *know* that there is not a body of men in the world with a higher standard of honour than the bar, and that no profession moreover is marked by a greater absence of jealousy or ill-will. The spirit amongst counsel is the spirit of generous emulation, and not the spirit of embittered and petty rivalry. The brotherhood of the bar, is, I venture to think, a notable and felicitous fact in our national life. Do we always realise, I wonder, the significance of two great features of the English Bar? First, that the discipline is a discipline *from within*, and secondly, that, so far as I know, there is no Act of Parliament whatsoever which regulates the call to or the conduct of the bar. Here indeed is a tribute to a great profession. We may justly say that the bar of England has always fulfilled its trust. I sometimes wonder how much of his outlook and method and how much the merit of his final conclusion a judge should attribute to the members of the bar who practise before him. This aspect of judicial decisions (particularly on points of law) is one which may perhaps be underestimated. The point may be put into a single sentence. It is this. Sound arguments beget sound decisions. Many of the best judgments, it will be found, are but reasoned and authoritative summaries of the cogent arguments addressed to the court. In a true and most significant sense it may be said that the bar takes to-day as it has taken in the past a direct and responsible part in the creation and development of our law by legal decisions. There is perhaps an even higher responsibility upon the barrister with respect to questions of fact. I conceive that the barrister should be regarded as a co-operator in the search for truth—he may be and ought to be a powerful instrument for the administration of justice as between man and man or Crown and prisoner. No one, I feel, has put this matter more clearly than Lord Herschell in his address to the Glasgow Juridical Society on 17th December, 1889: "To penetrate the inmost recesses of the human mind and find there the sources of men's actions, to reveal their true motives, to tear the mask from the seemingly fair exterior and exhibit the real nature which lies behind—these are the duties of the advocate. He must discharge them fearlessly and faithfully." Lord Langdale, in *Hutchinson* v. *Stevens*, 1 Keen, 668, justly refers to "Those truly honourable and important services which counsel constantly perform as ministers of justice acting in aid of the judge before whom they practise."

The Advocate of To-day.

Master Treasurer, there are a few words more I would wish to add on "The Advocate." First: In my view there never was a time when the position of the advocate was of greater importance or responsibility than to-day. A century ago the Press was but narrow in its range. To-day an unparalleled publicity is given to every trial that touches character and repute. Secondly: There never was a time when the profession of the Bar called for greater knowledge or greater intellectual grasp. The magnitude and intricacy of many of the trials in this decade of ours call for the highest mental capacity. Thirdly: There never was a time when the barrister had greater need of a wide culture and of a full acquaintance with history, with economics, and with sociological science. Unless equipped with these he will be as Sir Walter Scott would say, but a working mason only. If gifted with a knowledge of these subjects he can claim to be an *architect* in the profession. Fourthly: It seems to follow, in my view, that there never was a time when the advocate was more fully entitled to emphasise his arguments in any matter of importance. A generation or two ago a learned judge said to an eminent and energetic counsel: "The first time I hear an argument, I appreciate it, the second time it produces an impression upon me; but after the third time that impression is effaced." "Is it, my lord"? replied the learned counsel; "then I must repeat it a fourth time, in order that I may revive the *first* impression." Fifthly: There never was a time when a counsel was more fully entitled to exert his right to call all his witnesses. In North's "Life of Lord Keeper Guilford" (a member of the Middle Temple and a Reader who gave his reading here in 1671) it is said that the Lord Keeper always took care, when he was Chief Justice of the Common Pleas, and was trying cases at the Assizes, to allow counsel to examine all the witnesses that he desired to call—"for," said Lord Guilford, "a countryman never thinks his cause is tried unless all his witnesses are heard." I do not think, Master Treasurer, there is much difference between the country litigant of the seventeenth century and the litigant, whether rural or urban, of to-day. Sixthly: It is as essential now as at any time previously for counsel to remember that the case on which he is engaged is the *one* important case for his client. The late Mr. Justice Joseph Walton had a story which he always liked to tell. On the Northern Circuit, said he, was a King's Counsel, commonly called "Mr. Tom Jones." He was a man of some fullness of style, and one day, when arguing a case before, I think, Chief Justice Cockburn, he developed his argument at considerable length. At last the Chief Justice said, "Mr. Jones—time is passing." Whereupon Mr. Jones replied: "Let it pass, my Lord." A little later the Chief

Justice said: "Mr. Jones, there are other cases in the list." Mr. Jones replied: "Yes, my lord, there are; but not one save this in which my client takes the slightest interest." Lastly: It is as important to-day as ever that counsel should remember their duty of manly independence and courteous dignity. Each should recall the great words of Lord Erskine (when at the Bar), in *Rex* v. *Paine*, 1792: "I will," said he, "for ever at all hazards assert the dignity, independence and integrity of the English Bar; without which impartial justice, the most valuable part of the English constitution, can have no existence." May I personally add that a strong, upright and independent Bar is essential to the welfare of a free people. The words of Lord Erskine, Master Treasurer, were great words. But greater still, I believe, are the words spoken in this very hall by Lord Chief Justice Cockburn, on 8th November, 1864, when the Bar of England entertained M. Berryer—the distinguished French advocate, to dinner. Lord Brougham had spoken, and then the Chief Justice, in replying to the toast of the judges, made a memorable speech In the course of it, he said: "My noble and learned friend, Lord Brougham, whose words are the words of wisdom, said that an advocate should be fearless in carrying out the interests of his client; but I couple that with this qualification and this restriction—that the arms which he wields are to be the arms of the warrior and not of the asasssin. It is his duty to strive to accomplish the interest of his clients—*per fas*—but not *per nefas*. It is his duty, to the utmost of his power to seek to reconcile the interests he is bound to maintain and the duty it is incumbent upon him to discharge with the eternal and immutable interests of truth and justice." Master Treasurer, I have spoken of "The Law" and "The Advocate."

The Judge.

What of the "Judge" of to-day? I will speak of the High Court judges only—though I rejoice to pay a passing but deep tribute to my brethren of the County Court Bench, who, under the burdens of many duties, maintain so well the spirit and tradition of our justice. Master Treasurer, it seems well, in the view of the recent discussion in a great newspaper, to remember some basic considerations.

On this night of reminiscence and revival we should, I feel, reassert the principles and reinvigorate the spirit which have guided and animated the judges of this realm in the generations that have preceded us. Let us know where we stand! I, myself, realise deeply that the judges come from the bar, and that by the spirit of the bar their sense of independence and their instinct for fearless decision have been deepened and confirmed. It is equally vital to realise that His Majesty's judges are not a branch of any government department. They aim only at the ascertainment of truth and the declaration of law as they think it to be. They recognise no political party. They bow to no suggestion of passing expediency.

Lord Mansfield's words are as real to-day as when spoken by him in the eighteenth century. "The judges," said he, "are totally independent of the ministers that may happen to be, and of the King himself." (*The Dean of St. Asaph's Case*, 1784, 21 How St. Trials, 1040.)

A further point is this—that a judge when sitting with a jury is more than a mere recorder of evidence or a mere pronouncer on points of technical law. He is far more than that. He is entitled—yes, fully entitled—to express his personal opinion on the facts for the consideration of the jury, provided he leaves the issues of fact to them. Herein the state judges of the United States of America differ from the English judge. The right of my colleagues and myself on the matter was clearly formulated by the Court of Criminal Appeal in *Rex* v. *O'Donnell*, 1917, 12 Cr. App. Cas., 221, in these words: "It is sufficient to say, as this court has said on many occasions, that a judge when directing a jury is clearly entitled to express his opinion on the facts of the case, provided that he leaves the issues of fact to the jury to determine." That right of the English judge is, I venture to think, essential to the strength and independence of the English Bench.

A further matter I would mention is this: that the judges seek no popularity. They will not yield to the passing winds of popular excitement, whatever the direction in which those winds may blow. I recall to you to-night, once more, the spirit of Lord Mansfield, when he said: "I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels." (Case of *John Wilkes*, 1763, 19 How St. Trials, 1112-1113.) Still a further point is this: that it is our duty and our resolve to administer fearlessly the law as it stands. We follow, and we will continue to follow, the words of Mr. Justice Littledale in *Stockdale* v. *Hansard*, 1837, 3 St. Trials, N.S., 911 He there said: "If I am to pronounce a judgment at all in this or in any other case it must and shall be the judgment of my own mind, applying the law of the land as I understand it according to the best of my abilities, and with full regard to the oath which I have taken to administer justice truly and impartially."

May I not say that the ideal ever before us is that stated by Edmund Burke as the "cold neutrality of an impartial judge."

I do not, however, forget the dictum of Lord Bramwell that one-third of every judge is a common juror. Remembering that, I venture to add that if there be any unconscious instinct to lean to one side rather than the other, it is an instinct not in favour of the strong or wealthy, but an instinct which tends to lean rather towards those who are weak and those who are poor.

The judges of to-day, Master Treasurer, are content to abide by the passionless judgment of future generations.

May I add a personal word, alike as a Reader and a judge? It is this: There are two special duties which I feel that I should strive continually to impose on myself. The first is the great duty of patience. "Patience," said Francis Bacon, "is an essential part of justice." The second duty I would mention is the high obligation of courtesy and kindliness. The Reminiscences of Lord Justice Fry are perhaps too little known. In them you will read that when appointed to the Bench he set for himself certain rules to follow as a judge. Amongst those rules are these: "I must remember to give a benignant and receptive listening to each side, and when hearing young counsel I must remember how great the pleasure a kind word from the Bench has been to me in former years." Those words may well be an inspiration to every judge. Yes—and an inspiration not only to every judge, but to every member of the bar. Let each realise that we are still a great brotherhood. Let each follow the clear and imperative voice of duty. If we realise that brotherhood and follow that voice, then we shall guard with unswerving fidelity the honour of a great profession and the welfare of a noble institution.

Mr. Macmorran, in moving a vote of thanks to the Reader, said he was expressing the very warm appreciation of all present that Mr. Justice McCardie had revived an ancient custom and fervently hoped that, having now been revived after an interval of nearly 250 years, it would be followed by his successors (loud applause). Mr. Justice McCardie, in responding, observed that he hoped the occasion would mark the beginning of a new period of beneficence for the great Middle Temple (applause).

The Witchcraft and Vagrancy Acts.

By E. P. HEWITT, K.C., LL.D.

I.

WITCHCRAFT.

The laws enacted from time to time against witchcraft are quite distinct from the laws against vagrancy; they have a different history, and have been passed with different objects. But the two sets of statutes move to some extent upon parallel lines; and at one point, as will be shown later, they appear to overlap. It may be convenient to deal with the laws against witchcraft first.

Witchcraft is one of the very few offences which were treated with far less severity in early than in comparatively recent times. From the "Encyclopædia Britannica" it appears that Alemanni, in 600 A.D., forbade the private torture of women suspected of witchcraft, and that the Synod of Reisbach, 799 A.D., demanded merely penance for the offence. John of Damascus, Agobard, John of Salisbury (who died in 1180), and Burchard were equally mild. The laws of King Athelstan (repeated in the laws of Ethelred and Canute) provided that where witchcraft caused death it should be punished with death; but where the mischief caused was less serious the offender was to be imprisoned and fined. Mr. Thomas Wright, the learned editor of the narrative of the trial of Dame Alice Kyteler (published by the Camden Society) observed that: "Witches appear not to have been rigorously persecuted *until after witchcraft was placed by the Church under the head of heresies** and the most revolting articles of popular belief laid to the charge of the different sects who sought to reform or separate themselves from the Romish Church. We find it thus classed in the thirteenth century in the statutes of the Cistercian Order."

Down to the fourteenth century, witchcraft and sorcery were cognizable in the secular courts. Even late in the reign of Edward III, we find the King's Bench dealing with such charges; and, as Mr. Wright points out, "the prosecutions for witchcraft did not take the dark character which they afterwards assumed, till they had been adopted as a part of the charges against heretics." Two remarkable prosecutions for alleged witchcraft took place in 1324—one came before a common law court in this country, and acquittal followed; the other—being the celebrated case of Dame Alice Kyteler and her alleged accomplices—came before an Ecclesiastical Court in Ireland, and was followed by conviction. Dame Alice Kyteler contrived to escape to England; those tried with her were less fortunate—"some were burned, others publicly whipped in the market place and through the streets of Kilkenny, others banished and declared excommunicate" (Summers' "Geography of Witchcraft"). It will be found that in these, and earlier times, the term "witch" was used indifferently for male and female.

In 1431 Joan of Arc was condemned as a witch by a tribunal presided over by the Bishop of Beauvais, and she suffered death at the stake. Twenty-four years later a vain attempt on the part of those who had condemned her to atone for the barbarity was made by the erection of a chapel at Liseaux; and in recent times the Maid of Orleans has been canonised. Many persons were prosecuted in 1459 at Arras for witchcraft—"a number of wretched people were seized and by means of dreadful tortures were compelled to accuse many persons of wealth and respectability, who were obnoxious to those connected with the prosecution, and the latter were thus enabled to satisfy their private vengeance, or gratify their covetousness by extorting money." Mr. Wright observes that it was in this "dark period of our history" that charges of sorcery were first raised in England against people of eminence by their political adversaries. One of the celebrated cases of this nature is that of the Duchess of Gloucester, who, in the reign of Henry VI, was charged with witchcraft and treason; and another of such cases was that of the Duchess of Bedford, who, in the reign of Edward IV, was charged with having by witchcraft fixed the love of the king on her daughter, Queen Elizabeth.

It is pointed out in the "Encyclopædia Britannica" that until about 1400 witchcraft does not appear to have been regarded as a very serious offence, unless combined with treason; but between 1230 and 1430, two factors of great importance made themselves felt in Europe: "(1) the elaboration of demonology and allied ideas by the scholastics, and (2) the institution of the Inquisition to deal with heresy." All magic came to be regarded as heresy; and later, a great attempt was made to root out witchcraft. The "Inquisitors' Manual" appears to have been a handbook from which "they plied their tortured victims with questions, and were able to extract such confessions as they desired," these so-called confessions being described as "voluntary." Mr. Montague Summers, in his recent work, "The Geography of Witchcraft," refers to the case of a man who in 1371 was brought before the King's Bench on a charge of black magic and was released on swearing that he would never practise sorcery. Mr. Summers observes: "Two hundred years later he would almost certainly have been hanged, and it is astonishing that the Ecclesiastical Courts did not take up the matter. Their powers were considerably increased and quickened by the statute *De hæretico comburendo* passed in 1401, which was mainly the work of Archbishop Thomas Arundel." In this passage, it would, it is thought, have been more correct to insert the word "burnt" in place of the word "hanged."

By the Witchcraft Act of Henry VIII (32 Hen. VIII, c. 8) it was made felony, without benefit of clergy, for any person to use or exercise any "invocations or conjurations of sprites, witchcrafts, enchantments or sorceries," with intent to find money or treasure, or to procure unlawful love. This Act was repealed by 1 Ed. VI, c. 12, but early in the reign of Elizabeth a new Witchcraft Act (5 Eliz., c. 16) was passed, rather less severe than the statute of Henry VIII. It imposed death where the person charged had (by witchcraft) caused death; but where the harm caused was less than death, the punishment imposed was a year's imprisonment and the pillory for the first offence, and death if the offence was repeated.

So far as England is concerned, trials for witchcraft appear to have been most numerous in the seventeeth century, particularly in the first half of that century. But trials of this nature never seem to have been so frequent in this country as on the Continent, nor were they generally "accompanied by so revolting details. On the Continent, witchcraft and torture were inseparable" ("Encyclopædia Britannica"). In Mr. James Crossley's interesting introduction to Pott's "Discovery of Witches" (published by the Chetham Society), he refers to the "witch mania," and observes that he who believes that "man is a glorious animal" must not go to the chapter which contains a record of the witch mania for his evidence. "If he should be in search of materials for humiliation and abasement, he will find in the history of witchcraft in this country, from the beginning to the end of the seventeenth century, large and abundant materials." Mr. Crossley points out that "even the illustrious author of the *novum organum* is found sacrificing to courtly suppleness his philosophic truth, and gravely prescribing the ingredients for a witch's ointment."

It is important to observe that heresy—independently of witchcraft—appears, in the middle ages, to have been punishable in England by the Church Courts, but only by Ecclesiastical censures, penances, or excommunication ("Encyclopædia of Laws of England"). But statutes imposing the severest punishment for heresy were passed under Lancastrian and early Tudor Sovereigns. The most important of these Acts was 25 Hen. VIII, c. 14, under which persons accused of heresy were to be committed to the Ordinaries for

*The italics throughout are mine.

trial, and on conviction, if they refused to abjure, or having abjured, if they relapsed, they were to be committed to the lay power to be burnt. The statutes against heresy were repealed by 1 Ed. VI, c. 12, re-enacted under Mary I, and again repealed by 1 Eliz., c. 1.

JAMES I himself may be said to have been affected by the "witchcraft mania"; and he had published in Scotland, before he ascended the English throne, a book on *dæmonology*, especially penned "*against the damnable opinions*" of two men, "*whereof the one, called Scot, an Englishman, is not ashamed in publike print to deny that there can be such a thing as witchcraft.*" In this book, KING JAMES advocated the water test to ascertain whether a person charged was really a witch; and within a few months after ascending the throne of England, he procured a bill to be passed which repealed the Witchcraft Act of Elizabeth, and substituted provisions even more severe. By this Act (1 Jas. I, c. 12) it was made punishable with death for a person to exercise any "invocation or conjuration of any evill spirit," or to "consult, entertaine, feede, or rewarde any evill spirit, for any intent or purpose"; and it was made punishable (on the first occasion with imprisonment and pillory, and on the second occasion with death) for any person to take upon himself to tell by witchcraft where treasure could be found or to provoke unlawful love. As illustrating the working of this Act, it may be mentioned that in 1616 nine women were hanged at Leicester on the accusation of a boy aged twelve, who fell into convulsions, which he alleged were caused by spirits which the women set on him: six more women were in jail and would also have been hanged, had not the boy been detected in imposture.

The Witchcraft Acts were sometimes utilised as means for obtaining money and power—as in the case of the notorious MATTHEW HOPKINS, a Suffolk man, who styled himself "Witchfinder for the benefit of the whole Kingdom." He travelled about, in 1644-7, in the Eastern Counties, accusing various persons of witchcraft, and advancing in this way his own fortunes, causing at the same time a large number of people, chiefly women, to be condemned and hanged. In 1649 the gild of Berwick employed a "common pricker," a Scotchman, to discover witches, promising him 20s. a witch. His method was to strip suspected persons, men and women, and "probe them with a needle to find the insensible spot where the Devil had marked his own." This man was eventually hanged, and he confessed, upon the gallows, that he had caused the death of "above 220 women in England and Scotland, for the gain of twenty shillings apiece."

About this time JANE BROOKS was hanged on the charge of having afflicted RICHARD JONES, a "sprightly youth of twelve" with strange disorders. Her sister was also involved. As Mr. SUMMERS observes, "Once the deadly poison had been launched, it was impossible to say who might not be caught as the circle widened and widened throughout the little village or neighbouring market town, nay, throughout the whole countryside." Sir MATTHEW HALE in 1664 had before him at Bury St. Edmunds two women charged with witchcraft—they were convicted and burnt. And a few years later, eighteen persons were burnt at St. Osyths in Essex for the same offence. Even so late as 1716, a Mrs. HICKS and her daughter (aged nine) were tried for witchcraft at Huntingdon and hanged ("Haydn's Dict.").

BLACKSTONE, writing early in the reign of GEORGE III, makes reference to the Witchcraft Acts of HENRY VIII and JAMES I, and observes—

> "These Acts continued in force till lately, to the terror of all antient females in the Kingdom; and many poor wretches were sacrificed thereby to the prejudice of their neighbours, and their own illusions, not a few having, *by some means or other*, confessed the fact at the gallows. But all executions for this *dubious crime* are now at an end."

The statute of JAMES I remained operative until 1735, when it was repealed by 9 Geo. II, c. 5. This is the modern Witchcraft Act, and is still in force. It provides (s. 3) that no prosecution shall be brought for "witchcraft, sorcery, inchantment, or conjuration"; and "for more effectually preventing any pretences to such arts or powers whereby ignorant persons are frequently deluded and defrauded" it is enacted (s. 4) that if any person "pretend to exercise any kind of witchcraft, sorcery, enchantment, or conjuration, or undertake to tell fortunes, or pretend from skill in any occult science to discover where lost goods may be found, such person shall be imprisoned for a year and be put in the pillory once in every quarter of such year." The pillory, it may be observed, was a severe punishment, many persons dying from being struck with stones or the like whilst in the pillory. It was not abolished until 1837.

The Witchcraft Act of 1735, it will be noticed, differs fundamentally from the earlier Acts. Instead of accepting witchcraft as a reality, it assumes that no such thing as witchcraft exists and that those who profess to exercise it must be fraudulent. One obvious objection to which the Act seems to be open is the fact that although offences within the Act may differ widely in degree, the statute is so worded that the punishment is in all cases to be the same, namely, imprisonment for the full period of a year.

In concluding this article, it may be mentioned as evidence of the tenacity, in some districts, of the belief in witchcraft, that in 1863 an old paralysed Frenchman living at Castle Hedingham, Essex, died from being ducked as a wizard; and in 1895 one BRIDGET CLEARY was burnt as a witch in County Tipperary.

The Legal Consequences of the break with Russia.

A CERTAIN amount of confusion exists with regard to the legal effect of the rupture of diplomatic relations with the Russian Soviet Government in spite of official assurances that there is no reason why trading relations should not continue as heretofore. We shall therefore endeavour to elucidate a situation which, while presenting certain unusual features, nevertheless when brought to the test of general principle seems to us to be tolerably clear.

The relevant dates are as follows: The Soviet Government established itself in power in or about December, 1917. In the year 1921 and apparently on 16th March, 1921, the British Government accorded to it *de facto* recognition (see Foreign Office letter quoted in *A. M. Luther Co.* v. *Sagor & Co.*, 1921, 3 K.B., at p. 548), which took retroactive effect as from December, 1917. On 16th March, 1921, the British Government entered into a trade agreement [Cmd. 1207] with the Russian Government; but this agreement does not accord, and does not mention, recognition. By a diplomatic note of 1st February, 1924, the British Government granted *de jure* recognition. On 26th May, 1927, the British Government abrogated the trade agreement on the ground of the violation by the Russian Government of the mutual undertaking to abstain from subversive propaganda which is stated in the agreement to be one of its essential conditions. At the same time diplomatic relations were terminated.

Upon these facts the following propositions appear to us to be clear:—

(1) *Trade with Russia.*—The existence of diplomatic relations is not essential to the existence of lawful trade between the subjects of two States or the subjects of one of them and the Government of the other. The state of peace continues. Trade with Russian subjects or with the Soviet Government is by English law as lawful to-day as it was in 1920 or in 1926, though British subjects will not have the advantage of the assistance of diplomatic representatives in Russia in the removal of difficulties which might arise.

(2) "*Arcos*" *Limited* is an English company and is entitled to continue to trade in England. The nationality of its shareholders is irrelevant in time of peace; it is a distinct legal entity and takes its national character from the place of registration, from the State, namely, Great Britain, which has endowed it with legal personality. If war were ever to occur between Great Britain and Russia and if it were proved (as seems probable) that "Arcos" Limited is controlled from Russia, that is, that its "brain and heart" are Russian, then it would become an enemy corporation under the application of the test laid down in *Daimler Co.* v. *Continental Tyre Co.*, 1916, 2 A.C. 307. Meanwhile it remains an English company. Its directors and other employees may be British or Russian or of any other nationality. In so far as they are not British, they are subject to the operation of the Aliens Acts and Orders in Council thereunder. The British Government's Note of 26th May, 1927, states the willingness of the Government "to allow a reasonable number of the Russian employees of the company, whose names will be communicated to you, to remain in this company, provided that they comply with the law of the land and confine their activities to legitimate commerce."

(3) *Recognition.*—It is stated by some writers upon international law that recognition, once granted to a new state or a new government of an old state, is irrevocable. It is not necessary for our present purposes to assent to or discuss this general proposition, because it seems clear that the British Government has not purported to withdraw its recognition of the Soviet Government. Neither *de facto* nor *de jure* recognition rests upon the trade agreement of 16th March, 1921. We apprehend, therefore, that if to-day, as in the *Sagor Case* above referred to, the Foreign Office were asked by a litigant or by the court whether His Majesty's Government had recognised the Soviet Government, the answer would be the same as was given when that case was before the Court of Appeal. It may be said, what is the use or effect of recognition when diplomatic relations have been terminated? Diplomatically and politically the effect may be *nil*, but it seems to us that there is a legal effect, namely, that which is illustrated in the *Sagor Case*. In that case the defendants had bought timber from the Soviet Government, and were importing it into England. The timber had become vested in the Soviet Government as the result of a decree of nationalisation. The defendants, noting that it bore the plaintiffs' mark upon it, very properly informed them, whereupon they began an action for a declaration that the timber was their property, for an injunction to restrain the defendants from dealing with it, and for damages for conversion. When the case came before ROCHE, J., in November and December, 1920, that is, before any recognition by Great Britain of the Soviet Government, he was unable to hold that the group of persons referred to as the Soviet Government, not being recognised by Great Britain, had power by decree to divest the plaintiffs of their property, and he therefore gave judgment for the plaintiffs. But when the case came before the Court of Appeal in April, 1921, *de facto* recognition had been accorded by Great Britain, and therefore the Court of Appeal was bound to accept the validity of the Soviet decree nationalising the plaintiff's timber. Consequently, although ROCHE, J.'s decision in December, 1920, was right, it was reversed, and the defendants were allowed to retain the timber. (The recent series of *Jupiter Cases*, 1924, P. 236; 1925, P. 69; and 1927, P. 122, although at first sight a little difficult to reconcile with the *Sagor Case*, turn mainly on the fact that the "Jupiter" was not within the jurisdiction of the Soviet Government when the decree of nationalisation took effect, so that the property in the ship never passed to that Government.) If therefore we are right in our view that recognition of the Soviet Government is unaffected by the recent events, persons who hereafter purchase from them property which has vested in them as the result of a decree of nationalisation will be protected in the same way as the defendants in the *Sagor Case*.

(4) *Pending contracts* made with "Arcos" Limited, or with the Soviet Government through the Trade Delegation, would appear for the most part to be unaffected in point of law. There is nothing in the rupture of diplomatic relations to make their performance unlawful. Can they be affected by the doctrine of commercial frustration, and be discharged by supervening impossibility? That is a question which could only be answered with reference to the facts of each particular contract. *Prima facie*, of course, supervening impossibility is no excuse, but the recent war-time decisions show that if the court can be persuaded that the parties, had the possibility of the dislocating event been brought to their notice while negotiating the contract, would have agreed that the happening of such an event would *ipso facto* destroy and put an end to the contract, there is a good chance of the court applying the doctrine of frustration and excusing further performance. (See F. D. Mackinnon, "Effect of War on Contract," 1917, and "War-time Impossibility of Performance of Contract," in *Law Quarterly Review*, January, 1919.)

Marine Insurance:

The Doctrine of Proximate Cause.

LECTURE No. 1.

(By THE HON. MR. JUSTICE WRIGHT, M.A.)

There was a good attendance at the Lecture on the above subject given by Mr. Justice Wright at the London School of Economics on Thursday, the 26th ult.

The Right Hon. Lord DUNEDIN, P.C., G.C.V.O., presided.

Mr. Justice WRIGHT said: The Lloyd's policy, a curious and ancient document, is now scheduled to the Marine Insurance Act, 1906. That Act, by s. 55, provides as follows:—

(1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular,—

(*a*) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(*b*) unless the policy otherwise provides, the insurer or ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(*c*) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

A codifying Act, such as this, is supposed to put in plain language, immediately and fully comprehensible to the plain man, what the law is. On the contrary, it in fact, only speaks to those who know, and often increases rather than simplifies difficulties. First, what is here meant by "cause"? It can be said that simply on the words of the section, wilful misconduct is not a cause, negligence is not a cause, delay is not a cause within the purview of the policy; indeed, each of them differs from the scheduled perils, because, unlike them, it is not a material event or physical act directly operating on the ship or goods; rats and vermin are not in the category of insured perils. What, then, is meant by "*cause*"? I venture to suggest that it means a material event or physical act directly affecting the thing insured, disregarding mental causes or causes in which the state of mind is an essential element, except in the anomalous case of barratry.

And why the stress on "*proximately*"? And what does it mean? It comes from the old maxim "*in jure causa proxima non remota spectatur*," which is not limited to insurance at all. Lord Bacon, quoting the maxim, thus adds: "It were infinite for the law to consider the causes of things and their impulsion one on the other; therefore it contenteth itself with the immediate cause, and judgeth of each by that without looking to any further degree." Does it mean nearest in time? Does it exclude the concurrent operation of more than one cause? I venture to think both questions must be answered in the negative. Other synonyms have been suggested, such as *causa causans* (really a mere tautology), immediate, direct, dominant or efficient cause. In truth, the awkward epithet could well be dispensed with, because, in marine insurance, as in other spheres of law, it is causation pure and simple which has to be ascertained.

Indeed, I question if, properly understood, it indicates principles different in any way from those applied in other branches of law whenever it becomes necessary to consider the sequence of events, and the relationship of cause and effect. In law we are in the range of common-sense conception of fact and of crude and imperfect logic. I question if any lawyer would now boast that the law is the embodiment of human reason. The growth of scientific methods, of historical research, and of economic studies, has made thinking people realise that legal and judicial methods have ample scope, if the debates of lawyers and conclusions of judges are more modest in their ambition and are aimed not at the discovery of absolute truth, but at the more practical end of solving practical difficulties in a manner more akin to the methods adopted by men of affairs in settling the grave issues of practical life. The aim of law is to do what is just and right by such methods, and it is a noble aim. But the material with which it works is on the level of every-day ideas, and its principles are not principles of exact thought.

Cause, from this standpoint, means a material event from which another material event follows; and we have then cause and effect, not merely because of precedence in time, but because by long experience humanity has seen the former followed by the latter, whence we deduce a causal connexion.

If one ship runs into another and the latter is holed and sinks, we call that a loss by peril of the sea, partly because there is always a risk of vessels moving on the sea coming into contact with each other, and partly because the sea is always threatening to enter any cavity, and destroy the buoyancy of that which floats, and we call it a peril because the occurrence is accidental; the collision is merely the mode by which the hole is created. For marine insurance the matter is concluded. From other points of view it might be said the ship sank because the navigating officer of the other ship was drunk, or was dreaming of his sweetheart, or was merely careless; but man's ignorance does not trouble to go behind the material facts, and does not attribute causation to the intoxicated habits or amorous disposition or careless temperament of the officer. Equally, would the same be true if the ship that sank was to blame for the collision; the negligence of the responsible officer would be equally immaterial. The same would be true, I think, if the collision were due to the deliberate act of the sunken ship's owner who was actually navigating and wanted to sink his ship out of wickedness. His misconduct would debar him, as assured, from recovering for the loss, but, as appears from the Act, this is not because his deliberate wicked act, which was not a sea peril, was the *causa proxima* of the loss, but the true reason is that the law will not allow him to profit by his own wrongdoing. If, however, he were not the assured, it seems to follow from a recent decision of the House of Lords(1) that the law, perhaps anomalously, goes behind the physical happening, the collision and holeing and sinking of the ship, and fixes on the wicked act of the helmsman, being the ship's owner, but not the assured, as the cause of the sinking.

(1) *Samuel* v. *Dumas* [1924] A.C. 431.

It may be that here the exception proves the rule, but I have sufficiently indicated the general scheme. Marine insurance is concerned with the question whether the specified event insured against has happened; all events must be fortuitous or accidental—thus, if a ship merely sinks because of old age and decrepitude on a calm sea, there is no fortuitous event. Marine insurance takes the view of the common man, as to what is accidental; it does not think, like the predestinarian, that everything that happens, happens because it was so predestined from the beginning of the world. It takes a superficial or common-sense view of what is an accident. But once the accident has happened, the matter is ended. I think the explanation is given by Lord Sumner in the case mentioned above. It is because insurance is an aleatory or wager contract, it is a promise to pay a sum of money if one of specified events occurs, though it is not a mere bet or gamble in another sense, because the assured, having an insurable interest, is prejudiced by the event, and the contract is one of indemnity. But the point is, that the assured stands in no contractual relationship to the insurer apart from the contract itself; he is not like a carrier who is not allowed to say that he is excused by peril of the seas if the sea peril was brought about by the negligence of himself or his servants, as, for instance, in the case of the collision given above. For purposes either of marine insurance or of sea carriage the ship is lost by sea perils, and in either contract the words have the same meaning. In marine insurance the event has happened on which the underwriter has promised to pay; in sea carriage, the carrier has still to excuse himself for the *prima facie* breach of contract involved in negligent navigation. It is interesting that so great a commercial lawyer as Lord Esher could say that the words peril of the sea meant one thing in marine insurance and another in sea carriage, or perhaps rather that the concept of causation was different. That was the famous rat case(2), where rats gnawed a hole in a pipe open to the sea, whereby, as the ship rolled, water was let in. The House of Lords said that Lord Esher's view was wrong because every accidental admission of sea water into a ship, however caused, was a loss by peril of the seas; the accidental and mischievous act of the rats was no different in this aspect from the negligent opening of the wrong seacock by a careless engineer or the hole caused by the collision due to the navigator's negligence; the sea is the ever-present peril of whatever is water-borne, and once the defences are broken down it rushes in to damage or sink, however the breach may be caused.

Equally the law of marine insurance (except in the anomalous case of barratry) is not concerned with mental states, which indeed in law are not generally relevant, except where moral responsibility is involved, as in criminal law, where criminal intent is essential, or in some torts, where malice is the gist of the action; similarly negligence is only relevant where there is some relationship of duty or contract to be careful. All such conceptions are alien to an aleatory contract such as marine insurance, which is concerned with *material* happenings; but I cannot see that that makes the concept of causation any different in marine insurance from that in any other branch of law.

An illustration of the application of the conception of the material cause is given by the old but well-established rule that a loss incurred to avoid a peril is not the same as a loss by the peril. Thus it has been held in this country(3) (though not in U.S.A.) that if by reason of the port of destination being blockaded or on news of a hostile fleet being in the way the ship abandons her voyage, the cargo cannot be abandoned as a constructive total loss; the decision to abandon may have been prudent, but no material cause directly operating delayed the adventure. A different construction, however, was arrived at in the cases where, on the outbreak of the Great War British ships bound to foreign ports with British cargoes abandoned the voyage. It was held(4) that the proximate

(2) *Hamilton* v. *Pandorf*, 16 Q.B.D. 629; 12 App. Cas. 518.
(3) *Becker Gray* v. *London Assurance* [1918] A.C. 101.
(4) *Sanday* v. *British and Foreign Marine Insurance Co.* [1916] 1 A.C. 650.

cause was the outbreak of war, which consequently carried with it for a British subject so supreme a prohibition of trading with the enemy as to render it absurd to say that any independent volition of the subject was exercised. It was a simple restraint of princes. This is somewhat more metaphysical than anything that is ordinarily found in marine insurance. On the other hand, if force is present, the event insured against, viz., arrests, restraint or detainments of princes and people, has occurred in law even if the force is not exercised. Thus a ship pursued by an enemy may run ashore deliberately to avoid capture and the loss is deemed a loss by capture; the captain had no choice.(5) Similarly, if a captain, the ship being on the point of being captured, throws overboard the bullion he was carrying.(6) In either case the ship or bullion was lost—there was no hope of escape—all that happened was that the captors' acquisition was defeated. It may fairly be said that the material cause was present and operating, and that no independent volition intervened between that cause and the loss. In the same way, jettison justly taken to save a ship from a peril insured against has always been held to be a loss by that peril.

But there must be a direct and immediate connexion between the jettison and the peril, and the absence of this connexion is illustrated by a well-known case (7) which takes us back to the bad days of the slave trade. A claim was made for the jettison of slaves; by sea perils a slave ship had been delayed and her water was becoming exhausted; a certain number of slaves could be kept alive if the remainder were destroyed; the remainder were thrown overboard. Each slave was insured by the shipper at so much per head against peril of the seas, but the court held the assured could not recover, not on moral grounds, but on the ground that a loss by delay or protraction of the voyage though by that peril was not a loss by sea perils. No sea peril operated on the slaves.

The principle which is now well established, and, indeed, embodied in the Act in reference to goods-policies is illustrated by the simple case of perishable goods being damaged or destroyed, because, owing to delay through damage due to sea perils, they did not reach their destination in normal time.(8) It was the fact of delay, not the sea peril, which caused the loss. The delay was the real cause and was not covered. A further illustration of similar principles is found in another slave insurance case—they were mere chattels or live stock. The slaves mutinied; the insurance covered mutiny. It was held that slaves who were killed in the suppression of the mutiny or died directly of wounds received thereby, founded a claim for loss; but those who died of chagrin, or voluntary starvation, or threw themselves overboard in despair, did not constitute a loss; they were treated as to that extent capable of independent volition, and mental states were not the subject of insurance.(9) Not dissimilar are two contrasted cases: live-stock dying because fodder ran out owing to the voyage being protracted by sea perils constituted a case where the cause of loss was not covered.(10) But where in a storm the partitions dividing horses stabled on deck were broken away and the horses infuriated by the storm kicked each other to death, the loss was held to be directly caused by the storm: the death was the necessary consequence of the storm, being, in regard to the psychosis of the horses, treated as a material or a separate cause.(11)

Another case where the interposition of an act of volition is interposed between a material event and the loss is that of insurances on time policies on freight against sea perils. If the freight contract contains a provision that in the event of sea perils interrupting the navigability of the ship for a stated or indefinite period, the charterer *may* cancel, and the charterer in such an event elects to cancel, under an ordinary insurance of time freight there is no loss by sea perils; the cancellation of the charter-party follows not directly, from the peril, but from the volition of the charterer, which is not the risk insured.(12) It is otherwise if the charter-party provides that in such an event the charter-party is automatically to cease; no independent volition then is interposed between the material cause, the sea peril, and the loss of freight, and the loss is recoverable.(13)

There is a well-known case (14) which may appear anomalous. In the hold of a ship there were loaded a parcel of hides and a parcel of tobacco. By perils of the seas the hides became wetted and rotted, and gave off fumes which tainted and spoiled the tobacco. It was held that there was a loss of the tobacco by sea perils; yet there had been in one sense no direct operation of sea-water on the tobacco, and the fumes which ruined it came from the rotting hides. It might be said that the chemical changes taking place in the hides were a new cause, and were the direct and proximate cause of the loss. It seems that logically this can be justified by the view that the sea peril, though its operation had commenced long before the tobacco suffered, remained a still present force, and its effects were still operating in the normal course of nature through the material of the hides when the tobacco was affected. In other words, a proximate cause may have been in operation some time before the insured subject-matter suffers from its agency, so long as no independent cause, no new departure, supervenes.

Another type of case which needs careful consideration and may appear anomalous, is that of barratry, about which, indeed, there has been some controversy. Barratry is a fraudulent act of the master or mariners, in fraud of their employer, owner or mortgagee or charterer, from which a loss results. Suppose a master, in fraud of his owner, indulges in smuggling, and in consequence the ship is seized and condemned: the ship is lost by the capture and condemnation, and yet it is clear that the loss can be recovered under a count of barratry,(15) though, indeed, if the policy also covers capture, it can also and equally be recovered under that peril.(16) The offence, so far as material happenings are concerned, may have been completed before the seizure, and the ship in fact was lost by reason of the seizure and condemnation; yet the loss, it seems, can be recovered as for barratry. This can only be justified if barratry is regarded as a peril operating in its effect and consequences after the acts which constituted it have been completed.

This case also involves the question whether there may not be more than one proximate cause that is subsequent in its commencement to the other, yet both operative and effective till the end and both causing the loss. Such a case is more simply illustrated than in the instance last given, by such barratrous conduct of the master as cutting the ship's cable on a lee shore so that the ship, owing to the heavy wind and sea prevailing, is driven ashore and wrecked.(17) There is in such a case clearly a peril of the sea, violence of wind and waves, which dashed the ship to pieces: on an appropriate policy a claim for perils of the seas must succeed; but so also must a claim for barratry if covered; the material effects of the barratrous cutting of the cable, that is, the want of an anchor and its holding power, was a cause present and effective at the end. It seems to follow that this is a case of a duplication and co-operation of causes; the barratry began first, but both were in at the death, and a claim on either basis would be valid. Barratry is also anomalous because it introduces an element of causation or moral element, viz., the fraudulent or criminal intent with which an act is done.

The question of *concurrence* of causes has given rise to controversy in recent times, but I think it must be taken to be

(5) *Per* Erle, C.J., in *Ionides* v. *Universal Marine*, 14 C.B.N.S.259.
(6) *Butler* v. *Wildman*, 3 B. & Ald. 398.
(7) *Gregson* v. *Gilbert*, 3 Douglas 232.
(8) *Taylor* v. *Dunbar*, L.R. 4 C.P. 206.
(9) *Jones* v. *Schmole*, 1 T.R. 130.
(10) *Tatham* v. *Hodgson*, 6 T.R. 656.
(11) *Gabay* v. *Lloyd*, 3 B. & Cr. 793.
(12) *Inman S.S. Co.* v. *Bischoff*, 6 Q.B.D. 698; 7 A.C. 670.
(13) *The Bedouin* [1894] P.1.
(14) *Montoyn* v. *London Assurance*, 6 Ex. 451.
(15) *Earle* v. *Fowcroft*, 8 Est. 126.
(16) *Cory* v. *Burr*, 8 A.C. 393.
(17) *Heyman* v. *Parish*, 2 Camp. 149.

well established that more than one cause can operate in the same casualty. There is an important case about a small steam vessel insured against collision, but not against perils of the seas. By collision with a snag her condenser was holed: it was roughly plugged up and she was taken in tow in order to be beached. In the act of towing, the hole re-opened, and she sank. It was held that the assured could recover because the collision was the proximate cause of the loss.(18) Its effect continued and operated and she sank by reason of it before she could be placed in safety.

But it seems that in this case the loss could also have been successfully claimed as due to peril of the seas. The ship did sink because of the inrush of the water, and it seems impossible to say that that was not a loss by peril of the seas. That there may be a concurrence of causes operating to cause a loss, and operating each as a cause or proximate cause, was clearly, I think, laid down in the case of the steamship "Ikaria."(19) She was torpedoed off Havre, severely holed and her forward structure weakened, but she floated so long as the weakened bulkhead held. While waiting to be docked, she lay in the outer harbour of Havre, the weather became bad, the damaged bulkhead gave and she sank. The policy contained the "F.C. & S. clause," which in the second lecture I must deal with at length. Under that clause the underwriter is not liable if the loss is caused (that is, proximately caused) by the consequences (that is, acts done in the course) of hostilities. It was held that the torpedoing proximately caused the loss, and hence the warranty applied; but I think it is clear that the House of Lords thought the loss was also due to perils of the seas, and but for the warranty could have been recovered as such. The House of Lords clearly recognised two principles: (1) that there may be more than one proximate cause; (2) that the cause nearest in time is not necessarily the proximate cause.

In a most illuminating article (in the *Law Quarterly Review*) (20) by an anonymous but most distinguished author (now, alas, no longer with us), it was contended that in the two cases last cited the true meaning was that the policy otherwise provided, and that by providing in the one case that collision was covered and in the other case that consequences of hostilities were excluded, the policy provided that some other cause than the proximate cause was to be the basis of liability. This argument depends on the view that there can only be one proximate cause, e.g., that which is latest in time, and that where a ship sinks the sole proximate cause is overwhelming by the sea. The House of Lords in the case last referred to negatived both conclusions. The earlier cases referred to in this lecture, in my humble opinion, are in line with this conclusion.

One other case I must refer to before I close, and I shall mention its name, *Samuel* v. *Dumas*, 1924, A.C. 431, because the opinions of the law lords contain the latest and most illuminating discussion I know of this doctrine. An action was brought by a mortgagee for the loss of a ship which, as the court held, had been scuttled by the procurement and act of the owner. There was no question of barratry, because the master and others, who opened the seacocks so that the ship sank, were servants, not of the mortgagee, but of the owner, and were acting in collusion with the owner. The question was whether the criminal act of the owner was the proximate cause of the loss, or whether it was a loss by perils of the seas. The majority held that the scuttling was the proximate cause, a deliberate act and not an accident, and that the inflow of the water causing the ship to lose her buoyancy and sink, was no new or intervening cause, but the necessary and inevitable consequence of the wicked act of scuttling; indeed, they held, not only was the scuttling the proximate cause, but there was no peril of the sea. Lord Sumner, dissenting, held that the sole cause of the loss in insurance law was a peril of the sea; so far as the assured mortgagee was concerned, the incursion of sea water was fortuitous and accidental, neither contemplated nor intended, and the act of the wicked owner was as foreign to him as the act of the rat in the well-known case. The Marine Insurance Act, he said, by expressly referring to a loss attributable to the wilful misconduct of the assured, treats that misconduct as other than the proximate cause and is simply recognising the rule of law that no man may profit by his criminal act. A sinking such as this (fortuitous *quoad* the assured) was quite different, he held, from the sinking of a vessel in calm weather simply because by reason of the inherent weakness, her seams opened and she became unable longer to keep out the sea. In such a case no fortuitous element enters at all.

The decision of the House of Lords has fixed the cause applicable to such a case. I may, however, be pardoned if I express a personal predilection in favour of Lord Sumner's opinion.

The hardship of this decision in its application to innocent good owners has been mitigated by a clause inserted in the standard goods policy safeguarding them from such a defence, but as regards innocent mortgagees, underwriters will not give any such protection.

(18) *Reischer* v. *Borwick* [1894] 2 Q.B. 548.
(19) *Leyland Shipping Co.* v. *Norwich Union* [1918] A.C. 850.
(20) L.Q.R. Vol. 40, p. 426.

Arrestment on the Dependence.

THE appointment of a Committee by the Lord Chancellor under the chairmanship of Mr. Justice Hill to consider the advisability of adopting the process of Scots Law known as "Arrestment on the dependence" raises a question of far-reaching importance. Any process which will tend to make judgments more effective and prevent the escape of defaulting debtors will naturally appeal to the profession. But the *primâ facie* advantages to be gained by the introduction of a process which is alien to the whole spirit of the Common Law of England should be very seriously weighed against the more than probable reactions in the world of commerce. At the same time, it is to be regretted that the Committee, while dealing with this subject, have not been asked to consider the allied process in Scots Law of arrestment *ad fundandam jurisdictionem*. While it is true that this is an independent process, having for its object primarily the founding of jurisdiction against a foreigner not otherwise subject to the jurisdiction of the court, it is no less a process with the same object in view as that now referred to the Committee—the securing of assets belonging to the defender to satisfy any judgment that may be pronounced in favour of the pursuer (plaintiff).

Stated generally, arrestment on the dependence is a process enabling a plaintiff about to commence proceedings or who has commenced proceedings for the recovery of a sum of money to secure in the hands of third parties any movable assets belonging to the alleged debtor to abide the judgment. To give a practical illustration: If A is suing B for £100 and he knows that B keeps his bank account at the Bank of Scotland, Glasgow, A can, before he serves his summons or writ on B, arrest any funds or other assets B has at his bank. If he does so, the bank cannot part with any part of B's funds, etc., without the consent of A or the authority of the court. If the bank does so, it may be found liable in repayment to A. It will be seen, therefore, that if we except the limited analogy of the appointment of a receiver, the process is quite contrary to the underlying spirit of English law that a man's goods should be free of execution of any kind until a court of competent jurisdiction has pronounced judgment against him. Further, it must be remembered that the process has been in use in Scotland for generations. Thus, any hardship that may attach to it has become a recognised part of the necessary process to enforce justice. But for the same reason and on account of the attitude and power of the court, practitioners,

so long accustomed to its use, although they invariably apply for the warrant, rarely make use of it except in a proper case. It seems doubtful whether a novel process suddenly introduced into an already established system of law would not tend to be too readily seized upon and become in the hands of plaintiffs an instrument of oppression apart from its possible consequences on business.

The process is available in the Court of Session and in the Sheriff Court. The warrant to arrest may be granted in letters or precepts of arrestment, but as a matter of practice, in any action with pecuniary conclusions, a warrant to arrest is invariably asked for and granted along with the warrant to serve the summons or writ. As already explained, the arrestment may be executed before the summons or writ is served, but in that case the summons or writ must be served within a specified period or the arrestment fails. The arrestment is effected by an officer of court serving a schedule of arrestment on the arrestee personally. The person who lays on the arrestment is called the arrester; the person in whose hands the arrestment is used is called the arrestee; and the alleged debtor is called the common debtor. The arrestment attaches in the hands of the arrestee all movable property belonging to the common debtor. This includes cash, rents, salaries, wages, and moneys in the hands of trustees, but not bills of exchange or promissory notes. It may be used to attach workmen's wages in the hands of their employers, but only in excess of a certain sum. The process, however, is not available for this purpose on the dependence of an action in the Small Debt Court (recovery of sums under £20). It is also to be noted that the arrestment will give the arrester a preference in the fund arrested in the event of the subsequent bankruptcy of the common debtor unless the common debtor is adjudicated bankrupt within a limited period of the arrestment being effected.

It must not be supposed, however, that this arrestment on the dependence or *pendente lite* necessarily remains to attach the fund, etc., arrested throughout the course of the suit until judgment. The creditor can always loose the arrestment by intimation to the arrestee, and he will be compelled to do so on summary application to the court where the common debtor finds security for the sum sued for and costs. Further, in cases where obviously no possible grounds exist for the use of the process the court will usually recall the arrestment without the defender finding security. Where the process has been abused, that is to say, used maliciously and without probable cause, the defender will have a claim for damages; but the fact that the pursuer does not succeed in his action is not necessarily proof of malice or want of probable cause. Actions for abuse of the process are rare. This is largely accounted for by reason of the power of the court to recall the arrestment as explained above and from the fact that although practitioners ask for and obtain the warrant as a matter of course it is rarely executed except in the case of foreign debtors or debtors who are not *bonâ fide* in their defence but defending merely to delay the process with a view to the disposal of their assets before judgment. The necessity of this will be better understood when it is explained that in Scotland we do not have the summary judgment procedure available to plaintiffs in England under Ord. XIV. In Scotland where a defender puts in a relevant defence the truth or otherwise thereof cannot be inquired into until the trial.

It will be seen therefore that while the process has worked with advantage and without apparent hardship in Scotland, that is largely due to the fact that it was long established and accepted as part of the Scots law of diligence before modern commercial conditions obtained, so that one might say it has been tacitly limited in its application. What might result, however, from such a process being arbitrarily engrafted on an existing system of law cannot be too carefully considered. It seems almost certain that in the absence of some rigorous safeguard to restrict the application of the process within narrow and well-defined limits cases of undoubted hardship and oppression would arise. To give effect to such safeguards would in all probability render the necessary legislation nugatory. It is perhaps possible that the effect of the process might be partly achieved by altering Ord. XIV in such a way as to enable a wider use to be made of the provision for defenders under certain circumstances being required to find security. But the adoption of the Scots process in its entirety seems undesirable.

While it is not within the scope of the Committee, it may not be out of place to mention here something about arrestment to found jurisdiction. As explained below, the process is made use of to subject a person not otherwise within the jurisdiction of the Scots courts to that jurisdiction. In the well-known case of *Cameron* v. *Chapman*, 1838, 16 S. 907, the court expressed itself thus: "It is not necessary to inquire on what principle the custom is founded of arresting movables to found jurisdiction against their owner being a foreigner. It is plainly in opposition to the general doctrine, both of the Roman law and general jurisprudence, both of which admit the maxim *actor sequitur forum rei*. It was borrowed in Scotland from the law of Holland, where, as VOET observes, it had been introduced contrary to principle, from views of expediency and for the encouragement of commerce." In that case a domiciled Englishman with a claim against another domiciled Englishman had arrested funds of the latter in the hands of a third party in Scotland, and followed it by action in Scotland. But a more glaring case of the misuse to which this process may be put is that of the recent case of *La Société du Gaz de Paris* v. *La Société de Navigation "Les Armateurs Francais,"* 1926, S.C. (H.L.) 13. In that case a French manufacturing firm arrested a ship belonging to another French firm which had called at a Scottish port, to found jurisdiction, and thereupon commenced an action on a charter party entered into between the parties in France. The law of Scotland did not apply to the contract, and there was not a single Scottish fact in the case. Nevertheless, although the case commenced in the Sheriff Court at Dumbarton on 19th May, 1924, it was not until 3rd December, 1925, that it was finally dismissed by the House of Lords on the preliminary plea of *forum non conveniens*.

For the purpose of founding such jurisdiction, it seems to be immaterial how small the sum arrested may be. In *Shaw* v. *Dow and Dobbie*, 1869, 7 M. 449, it was held that £1 8s. 6d. was enough. It is obvious, therefore, that the process admits of great hardship to foreign traders. For while the arrestment *ad fundandam jurisdictionem* places no nexus on the funds arrested, and must be followed by arrestment on the dependence if security is desired, an enforceable decree will follow against the foreign defendant, which must inevitably lead to a greater wariness in placing capital of any kind within the jurisdiction and react unfavourably on commercial enterprise.

The Question of the Scheldt and the Dutch-Belgian Treaty.

AT the end of last March the First Chamber of the Dutch States-General rejected the Belgo-Dutch Treaty, signed in 1925 by the representatives of the two countries. The Treaty was the outcome of protracted negotiations which began at the Paris Peace Conference in 1919. Its rejection acted as a reminder that the questions regulated by it concern not only the two contracting parties, but also the neighbouring European Powers, and especially Great Britain, whose commercial interests are in many respects bound up with the development of Antwerp as a maritime port, and with the complete freedom of navigation on the Scheldt. Of 8,847

sailing vessels and steamers which arrived in Antwerp in 1924, 3,929 were British; in the same year, of 237 lines registered as having regular services from Antwerp eighty-two were British. However, commercial interests enter only indirectly within the scope of this article, which is concerned with the legal aspect of the problems regulated in the Treaty and left open by its rejection. Few questions which have recently become the object of international controversies abound in more legal intricacies. The main source of confusion is the fact that although the dispute centres round the Scheldt, it touches, from the point of view of international law, upon several distinct questions. Thus the controversy concerning the sovereignty over the passage of the Wielingen ought to be distinguished from the question of the Scheldt proper. With regard to the latter, the question of the conservation of the river in a navigable condition must be kept apart from that of the freedom of navigation as such. Again, the distinction should be preserved between freedom of navigation for commercial purposes in time of peace and regulations for time of war. Finally, there is the question of communication between Antwerp and the Rhine, *i.e.*, of the canals leading from Antwerp through Dutch territory to places on the Rhine, both in Holland and in Germany. (The last-mentioned question is only indirectly connected with the legal status of the Scheldt, and it is not intended to discuss it in this article.)

Sovereignty over the Wielingen.—The Wielingen is a water passage running westwards along the coast of Belgium and Holland. Both countries claim sovereignty over that part of the passage which runs along the coast of Belgium. The latter country bases her claim on the fact that the passage forms a part of Belgian territorial waters, whereas Holland regards it as a part of the estuary of the Scheldt, the Dutch sovereignty over which is admittedly uncontested. In addition, Holland supports her attitude by reference to certain historical rights and long usage up to the time of the establishment of Belgium as an independent state. While Belgian writers, as well as some Dutch publicists, describe these rights as vague and uncertain, it is conceded on both sides that since the establishment of Belgium the sovereignty over the Wielingen has been in dispute. Each country solemnly upheld on several occasions its respective claim, and each made frequent attempts to interpret the actions of the other as an admission of the correctness of its own attitude. Thus it appears that in the course of the world war the Dutch Government refrained from treating the contested part of the Wielingen as Dutch territorial waters, and that it refused to take action when a Belgian boat was captured west of the frontier line. When in 1920 the negotiations between the two countries were nearing a satisfactory conclusion, Belgium broke off the negotiations on account of Holland's insistence on her claim.

Article 1 of the Treaty of 1925 contains the declaration that both parties uphold their original position with regard to the contested passage, and one of the arguments now put forward by the Dutch opponents of the Treaty is that it leaves the question of the Wielingen unsettled. The legal position is here obviously a difficult one. For even assuming that the historical rights of Holland are admitted, the question arises whether they have not been modified or altogether abolished as a result of the creation of an independent Belgium. And even granted that the estuary of the Scheldt includes the entire passage of the Wielingen, is the right arising therefrom strong enough to defeat a State's rights in respect of its territorial waters? The opinion may be ventured—it is impossible, within the space available, to support this submission by a detailed legal analysis—that the last question must be answered in the negative. The maritime belt is, in international law, an inalienable appurtenance of State territory; this so much so that any historical rights that Holland may have acquired in the course of centuries are to be deemed as merged in the Treaty of 1839, by which the Kingdom of Belgium, with a maritime coast, has been established.

The Scheldt.—As mentioned, the question of the Scheldt presents a double aspect. One pertains to the freedom of navigation on the river; the other to its conservation in a navigable condition. Both features are dominated by the fact that the mouth of the Scheldt is under Dutch sovereignty, and that a situation is thus created whereby the principal maritime port of a nation is separated by what is essentially a political barrier from its natural access to the sea. Its fortunes are dependent to a large extent upon the will of a nation which is interested in the development, partly at the cost of Antwerp, of the rival ports of its own, namely, of Rotterdam and Amsterdam. Events have shown that the danger involved in this situation did not remain a theoretical possibility. The Treaty of Münster of 1648 closed the Scheldt altogether for navigation on the side of the United Provinces. As a result, a flourishing port was reduced to stagnation and poverty, while Amsterdam went through a period of unexampled development. It is commonly admitted that the exclusive domination over the mouth of the Scheldt with a view to preventing the full growth of Antwerp had been ever since an object of Dutch policy. But this policy found itself opposed by the growing tendency to establish as a rule of international law the principle of freedom of navigation on most international rivers, *i.e.*, on such rivers as, having access to the sea, cross the territories of more than one State. The French Convention decreed in 1792 the opening of the Scheldt to the ships of all riparian states, and the Congress of Vienna definitely sanctioned the principle of freedom of navigation on international rivers, including the Scheldt. The Treaty of 1839, which confirmed this legal position, provided that pilotage, buoying and conservation of the channels of the Scheldt shall be subject to a joint superintendence to be exercised by Commissioners appointed for this purpose by the two parties. It was, and is, claimed by Belgian writers that these provisions amounted to a partition of sovereignty over the Scheldt. It would probably be more correct to say that they created a servitude in favour of Belgium without essentially detracting from Dutch sovereignty. The actual working of these provisions and the way in which Belgium used to regard them seem to confirm this construction. For although the Treaty regulations did not prevent a rapid development of the Port of Antwerp—the tonnage entering the harbour rose from 51,000 in 1831 to 576,000 in 1863 and to 14,147,000 in 1914—Belgium never regarded them as satisfactory. It was alleged that the joint supervision amounted in practice to a veto on the part of the Dutch authorities or at least to vexatious procrastination. Also—and here emerges still another aspect of the problem—the freedom of navigation as confirmed by the Treaty of 1839 did not extend to ships of war or, in general, to times of war so far as Dutch neutrality was concerned. For the purpose of naval defence the Scheldt was hermetically closed to Belgian warships and to those of her allies. And the opinion was expressed by a British lawyer—with what justification we cannot judge—that had British warships been permitted at the beginning of the World War to proceed to Antwerp before that city fell to the Germans, the course of the war might have been considerably modified.

Accordingly, it was not surprising that when the Peace Conference in 1919 approached the task of a comprehensive settlement and after it had been decided to abandon one of the main stipulations of the Treaty of 1839, namely, the neutrality of Belgium, the latter country put forward demands calculated to free it, by way of compensation, from the military and economic restrictions of the old treaties. Unfortunately, annexationist claims partly countenanced by the Belgian Government were linked up with these demands with a view to putting an end to the sovereignty of Holland over the mouth of the Scheldt. Categorically repudiated by

Holland and ultimately withdrawn by Belgium, they left behind them a feeling of bitterness which explains a great deal of the recent events. The Peace Conference appointed a Commission for Belgian Affairs which, while recognising that the Treaty of 1839 imposed upon Belgium restrictions incompatible with present conditions, in the end left the matter to be settled directly by the two parties concerned. The first stage of this protracted attempt at a settlement has now been brought to an end by the refusal of the Dutch First Chamber to ratify the Treaty of 1925.

(*To be continued.*)

Commissions of Sewers.

By ALEXANDER MACMORRAN, M.A., K.C.

I.

In the case of the *Isle of Ely*, 10 Rep. 141a, it is said :—"It is to be known that by the common law before the statute of 6 Henry VI, ch. 5, the King ought, of right, to save and defend his realm as well against the sea as against the enemies, that it should not be drowned or wasted, and also to provide that his subjects have their passage through the realm by bridges and highways in safety, and therefore, if the sea walls be broken, or the sewers or gutters are not scoured, that the fresh waters cannot have their direct course, the King ought to grant a commission to enquire and to hear and determine these defaults." In a much more recent case, *Hudson* v. *Tabor*, 2 Q.B.D. 290, it was said :—"The King has probably from the very earliest times had a right, as part of the prerogative, to defend the realm against waste of the sea and to order the construction of defences at the expense generally of those who are to be benefited by them. The various statutes of sewers, beginning with the statute of 6 Henry VI, c. 5, do but regulate the exercise of the prerogative in this respect and prescribe the forms of commissions for the ordering and execution of the necessary works, which forms have from time to time been varied." The passages above quoted are set out in the judgment of Fry, J., in *Attorney-General* v. *Tomline*, 12 Ch. D. 231 ; and he added :—"I come to the conclusion that there exists in the Crown this prerogative right and duty, a duty of course to its subjects of which the law must take cognisance though the law does not enforce the performance." The same statement will be found in "Callis on Sewers," at p. 25, where he states that "the King, by the tenure and prerogative of his crown, is bound to see and foresee the safety of this realm, and so this law is a prerogative law and seems to be as ancient as any laws of this realm, and all prerogatives be without limitations of time. Neither can it be presumed that all or any kings till the time of Henry VI were so improvident as to want these laws, without the which the realm could not be defended from the violence of that unmerciful enemy the sea, wherein I do conclude that these laws of sewers be as ancient as any other laws of this kingdom be."

But while it is clear that commissions of sewers may be issued by the Sovereign in virtue of his prerogative, it must be borne in mind that commissions may be issued under the provisions of later statutes such as the Land Drainage Act, 1861, which provides that commissions may be issued for new areas on the petition of the proprietors of the lands affected after investigation by an inspector. But whether appointed in one way or the other, the powers and duties of the commissioners are the same.

It may be convenient at the outset to observe that the word "sewers" as used in connexion with commissions of sewers has not the meaning popularly assigned to it at the present time. It includes works executed for defence against the sea or for the prevention of inland floods, and in one well-known case, *Poplar District Board of Works* v. *Knight*, 28 L.J., M.C. 37, it was held that a marsh wall or embankment which kept back the River Thames at high water from inundating the Isle of Dogs, and through which sewers passed which drained the Isle at low water, was a sewer. The Bill of Sewers, which is entitled "A General Act concerning Commissions of Sewers to be directed in all parts within this Realm," sets out the form of the commission ; and the extent of the jurisdiction of the commissioners will be seen to be very wide, extending as it does to "walls, streams, ditches, banks, gutters, sewers, gotes, calcies, bridges, trenches, mills, mill dams, floodgates, ponds, locks, hebbing wears and other impediments, lets and annoyances." Over all such matters the commissioners exercise jurisdiction, and it may be said, to put the matter very shortly, that the powers and duties of the commissioners of sewers are twofold : (1) to protect the land from inroads of the sea by means of walls or sea defences, and (2) to provide clear outlets into the sea of inland waters which otherwise would cause floods. The powers and duties of commissioners are twofold in another sense : they are enabled to enforce the liability to repair which may attach to the lands of individual owners, and they have power, in the second place, to execute works and to recover the expenses of so doing by means of rates. With regard to the liability of individuals to repair sea walls, banks and defences of a like kind, such liabilities may arise by prescription, custom, *ratione tenurae*, grant or covenant. Since the decision in *Hudson* v. *Tabor*, already mentioned, it would appear that there is no liability in respect merely of frontage or of *usus rei* or ownership. The commonest of these forms of liability is that which arises *ratione tenurae*, that is to say, by reason of the tenure of certain lands and on that subject the case of *Hudson* v. *Tabor* may usefully be referred to. In that case the plaintiff was the occupier of land, and the defendant was the proprietor of adjoining land fronting a creek communicating with the sea. It was necessary that each proprietor, having land fronting the creek, should maintain a sea bank or wall to keep out the sea, and such a sea wall had been maintained by the creek time out of mind. The wall protecting the plaintiff's land was continuous with that defending the defendant's land, and the level of the defendant's land was higher than that of the plaintiff. The walls had a tendency gradually to subside, and it became necessary from time to time to raise them to the proper height by placing fresh materials on the top. Owing to an extraordinarily high tide the water flowed over the defendant's wall and spread not only over his land, but also over the land of the plaintiff, doing considerable damage. In an action to recover the amount of the damage the jury found that the mischief had happened through the defendant's neglect to keep his wall at the proper level. It was held, first, that the mere fact that each frontager had always maintained the wall in front of his own land, and that no one had thought it necessary to erect a wall or bank to protect himself from the water coming from his neighbour's land was not sufficient evidence to establish a prescriptive liability on the part of the defendant to maintain the wall not only for his own protection but for that of adjoining landowners, and, secondly, that by the common law, apart from prescription, no such liability was cast upon the defendant. The principle of the decision will be found in one sentence in the judgment of Cockburn, C.J. :—"The fact that something which a man does for his own benefit may incidentally benefit his neighbours is not, we think, sufficient to warrant the inference that he has bound himself to continue to do the thing in question so as to render him liable for damages if he omits to do it. In the absence of all other evidence of liability it appears to us more reasonable to refer what has been done to a regard for the proprietor's own interest than to any obligation he has taken upon himself towards another." It may be mentioned incidentally that this principle was recognised and acted upon by Lord Russell, C.J., in *Rundle* v. *Hearle*, 1898, 2 Q.B., at p. 90. Where the commissioners seek to enforce liability of this kind they may, under the statute of Henry VIII, execute the necessary work and inflict a fine upon the person liable equivalent to the costs

for repairs, or they may, under the later Act, 3 & 4 William IV, ch. 22, s. 15, execute the repairs and recover the expenses as provided by that Act. But, as has been pointed out, the powers and duties of the commissioners are not limited to the enforcement of the legal liabilities of persons by reason of tenure or the like. They may themselves execute works and recover the expenses by means of rates. The powers of the commissioners under the Bill of Sewers are very wide, but for practical purposes they may be taken to be set out in the Land Drainage Act, 1861, s. 16. It is therein provided that "the powers of commissioners of sewers acting within their jurisdiction shall extend to the following acts:—

"(1) To cleansing, repairing or otherwise maintaining in a due state of efficiency any existing watercourse or outfall for water, or any existing wall or other defence against water (hereinafter referred to under the expression 'maintenance of existing works');

"(2) To deepening, widening, straightening or otherwise improving any existing watercourse or outfall for water, or removing mill dams, weirs or other obstructions to watercourses or outfalls for water, or raising, widening or otherwise altering any existing wall or other defence against water (hereinafter referred to under the expression 'improvement of existing works');

"(3) To making any new watercourse or new outfall for water, or erecting any new defences against water; to erecting any machinery or doing any other act not hereinbefore referred to, required for the drainage, necessary supply of water for cattle, warping or irrigation of the area comprised within the limits of their jurisdiction (hereinafter referred to under the expression 'the construction of new works'):

"Provided—

"(1) That no person shall by virtue of this Act be compelled to execute at his own expense any works which he would not have been compelled to execute if this Act had not passed;

"(2) That no work shall be deemed to be a new work that is in substitution for an old one, in cases where such old work is so much out of repair or so inefficient as to make it expedient to construct a new work in place thereof;

"(3) That full compensation shall be made for all injury sustained by any person by reason of the exercise by the commissioners of the above powers;

"(4) That the exercise of the foregoing powers shall be subject to the restrictions hereinafter mentioned."

An important qualification of these powers is contained in s. 29 of the same Act, which provides that if any improvement of existing works or construction of new works involves an expenditure of more than £1,000, a notice containing plans and estimates of the proposed work of the area to be rated, and a list of the proprietors and the acreage must be circulated in the district and advertised in some newspaper of the district for two months, and a notice must be placed on the church door of the parish for three successive Sundays. And, by s. 31, if the proprietors of one-half of the rated area dissent, the commissioners cannot proceed, but if there is no such dissent, they may execute the works.

(To be continued.)

The Property Mart.

We regret that we are unable to do more than call the attention of our readers to the many important Auction Sales announced in this issue, the pressure on our space being quite unprecedented. These announcements speak for themselves and the sales are all in the hands of some of the most eminent firms in the auctioneering profession. We should, however, point out that, in addition to the property side of the auctioneering profession, there are firms who specialise in the valuation and realisation of trade stocks. The London Trade Sale Rooms were recently entrusted by the Westminster Bank with the realisation of a stock of no less than 52,000 clocks, all of which were disposed of for cash within one and a half hours, a total sum of £7,000 being realised.

The Surcharge Powers of a District Auditor.

By RANDOLPH A. GLEN, M.A., LL.B.

Local finance has become a matter of vital national importance. The nation cannot thrive without a thriving industry, and industry cannot thrive in places where the local rates are excessive. Excessive they must be unless a curb is placed upon extravagant administration. The district auditor is the curb. A slack auditor can cause immense mischief. A vigilant one deserves the thanks not only of the ratepayers in his own particular area but of the nation.

The accounts of several county borough and borough councils, of all county, metropolitan borough, and non-municipal urban district councils, rural district councils, parish councils and parish meetings, and boards of guardians, are audited by district auditors appointed by the Minister of Health. In about 200 boroughs, the only accounts subject to such an audit are special accounts such as those relating to education, housing and unemployed workmen. The housing accounts of societies and other bodies within s. 3 (2) of the Housing Act of 1923 are also subject to audit by the district auditor.

These officers—I am not dealing in this article with the elective and mayor's auditors in boroughs, who have no power to surcharge—are, by virtue of the District Auditors Act, 1879, paid by salary out of moneys voted by Parliament, but local authorities contribute to this expense in the form of Inland Revenue stamp duties based on the net expenditure audited. The overseers' accounts used to be audited free of charge, but the Rating Act of 1925 has abolished this office. Under s. 54 (1) of that Act, "the accounts of the receipts and expenditure under this Act of assessment committees, and of rating authorities, and of the officers of those authorities respectively, shall be made up, and shall be audited by district auditors, in like manner and subject to the same provisions as the accounts of a county council, and the enactments relating to the audit of those accounts, and to all matters incidental thereto and consequential thereon, shall apply accordingly, subject to such modifications, if any, as the Minister may prescribe." The words "under this Act" prevent any material extension of the liability to audit. In the case of an assessment committee there will be no other receipts or expenditure, but the only receipts and expenditure of rating authorities "under this Act" will be those recorded in the rate collection accounts (including appeals) and items in respect of duties of overseers transferred to the authority by the Act.

Under the Audit (Local Authorities) Act, 1922, those accounts of local authorities which, in the past, have had to be made up and audited half-yearly must now be made up to the 31st March, or other date ordered by the Minister of Health, and audited once a year; but this does not apply, in the metropolitan area, to boards of guardians, managers of a school district, or sick asylum district other than the Metropolitan Asylums District. Notwithstanding any statutory period, the Minister has power to prescribe the period for which the accounts are to be made up and audited: see Local Government (Emergency Provisions) Act, 1916, s. 14 (2), made permanent by Expiring Laws Act, 1925. The Act of 1922 also provided that "the Minister of Health may at any time direct a district auditor to hold an extraordinary audit of any accounts which are subject to audit by district auditors." An extraordinary audit held under this section "shall be deemed to be an audit within the meaning of the enactments relating to audit by district auditors, and may be held after three days' notice in writing given to the authority or persons whose accounts are to be audited." But s. 3 of the District Auditors Act, 1879 (which requires the submission to the district auditor of a financial statement in the prescribed form), does not apply to these "extraordinary" audits.

The powers of the district auditor himself are derived from a number of enactments. Thus, s. 32 of the Poor Law Amendment Act, 1844, gives him "full powers to examine audit allow or disallow of accounts, and of items therein, relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the *negligence or misconduct* of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money books deeds papers goods or chattels found by him to be due from any person." Under s. 247 of the Public Health Act, 1875, he has power to call for the production of any document he deems necessary, and "shall disallow every item of account *contrary to law*, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the *negligence or misconduct* of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made." This section allows appeals against allowances or disallowances by the auditor by way of *certiorari* to the King's Bench Division or appeal to the Minister of Health. In the case of appeals to the Minister, he may "decide the same according to the merits of the case; and if he shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, he may . . . direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge." An important check upon the auditor's activities is contained in the Local Authorities (Expenses) Act, 1887, under which "expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned" by the Minister of Health.

Perhaps the most important decision affecting the surcharge powers of a district auditor is *Roberts* v. *Hopwood*, 1925, A.C. 578, in which the House of Lords laid down two propositions of the greatest assistance to this officer. The first related to the general discretion of local authorities, and may best be put in the words of Lord WRENBURY (*ib.*, at p. 613): "A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes, merely because he is minded to do so—he must in the exercise of his discretion do not what he likes, but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably." This was applied by the House holding that the fixing of an arbitrary sum for wages without regard to existing labour conditions was not a reasonable exercise of the discretion. The second proposition related to the power to surcharge an unreasonable expenditure upon a lawful object, and I take the words of Lord BUCKMASTER (*ib.*, at p. 585): "An item in an account is not merely a heading; it includes both the object and the payment, and, while the object may be lawful, the expenditure in respect of it may be so excessive as to be unlawful, and to the extent by which the amount exceeds legality it is the duty of the district auditor to disallow it and surcharge the sum on the person responsible for its being made." These principles were applied in a Bethnal Green case which also went to the House of Lords (*Roberts* v. *Cunningham*, 1925, 42 T.L.R. 162). There the adoption as a general principle of a minimum rate of wage of £4 per week to full time male employees over twenty-one who were members of a trade union, and of £3 10s. to women in the same category, was held to be unlawful because it excluded consideration of the class of work to be done and the cost of living among workmen. In the last issue of THE SOLICITORS' JOURNAL (p. 488) is reported a third House of Lords case of a similar kind (*Woolwich B.C.* v. *Roberts*). There the items disallowed were those parts of the wage payments made by the council in the year 1923-24, which were more than 12½ per cent. in excess of the standard rates as recommended by the awards issued by the Joint Industrial (or Whitley) Council for the Administrative County of London and applicable to manual workers employed by local authorities. The amount paid in excess of the Joint Industrial Council awards came to £18,473 during the year. That was reduced to £8,000 (i) by deducting the 12½ per cent. margin allowed for the Council's discretion in the matter, (ii) by disregarding all payments which were less than 3s. a week in excess of that margin, and (iii) by giving the council the benefit of the doubt in any question arising in connexion with the grading of the workmen. All courts upheld the surcharge.

A very important recent surcharge case of a different nature was *Rex* (*Wandsworth Guardians*) v. *Grain*, 1927, C.A., 43 T.L.R. 342. In this the auditor had surcharged part of the superannuation allowance paid to a registrar of births and deaths on the ground that his emoluments upon which the allowance was based wrongly included an annual gratuity paid to the officer because of the paucity of fees and the increased cost of living during the war. The gratuity had been specially sanctioned under the Act of 1887 quoted above, so that the auditor could not surcharge it during the years it was paid. He contended, however, that this Act did not make it a legal payment in the sense that it could properly be regarded as an "emolument." SALTER, J., in the Divisional Court, agreed, but Lord HEWART, C.J., and AVORY, J., disagreed, and the whole court held that, whether this contention was right or wrong, the auditor had no power to surcharge the guardians because they had not been guilty of "improper conduct," drawing a distinction between s. 32 of the Act of 1844 and s. 247 of the Act of 1875 (both quoted above), the former not using the words "contrary to law" (see 43 T.L.R. 38). In the Court of Appeal it was unanimously held that the gratuity was an emolument and that the surcharge was therefore wrong, but every member of the court delivered a strong expression of opinion to the effect that "improper conduct" was not necessary to enable the auditor to surcharge under s. 32. It is a pity that this latter decision is only "obiter," as, from a public point of view, it is far the more important question of the two.

There have been many other cases relating to the surcharge powers of district auditors, and the following selection may be of general interest. In an old case (*Reg.* v. *Chiddingstone Inhabitants*, 1862, 31 L.J., M.C. 121), a district auditor was held to have no power to re-open accounts which had previously been audited. In the following cases the court quashed surcharges by district auditors: *Rex* (*Bailey*) v. *Roberts*, 1908, 1 K.B. 407, where the local authority had not accepted the lowest tender; *Rex* (*O'Leary*) v. *Calvert*, 1898, Ir. K.B. 266, where a local authority's engineer had certified for payment to a contractor for work done after the expiration of the time limited by the contract; *Rex* (*Kennedy*) v. *Browne*, 1907, Ir. K.B. 595, where a solicitor had charged two guineas per document for preparing 113 contractors' housing agreements, these being printed forms which merely needed the filling-in of names, etc., but the amount had been allowed by the taxing master before whom the authority were represented by an independent solicitor; *Rex* (*Stepney B.C.*) v. *Roberts*, 1915, 3 K.B. 313, *re* small tenement abatements;

Rex (*Oulton*) v. *Easton*, 1913, 2 K.B. 60, *re* furniture at new non-provided school; *Rex* (*O'Neill*) v. *Newell* (No. 1), 1911, Ir. K.B. 535, *re* expenses of county surveyor in giving evidence for his council; *Rex* (*Bridge*) v. *Locke*, 1911, 1 K.B. 680, *re* interest paid to bank after transfer of existing loan; and *Rex* (*Butler*) v. *Browne*, 1909, Ir. K.B. 333, *re* payment of instalments of loan by rural district council after transfer of subject of loan to urban district council, but before legal requisites for effecting transfer under adjustment award had been fully carried out. In the following cases the surcharges were upheld: *Rex* (*Battersea B.C.*) v. *Roberts*, 1914, 1 K.B. 369, *re* small tenement abatements; *Rex* (*O'Neill*) v. *Newell* (*No.* 2), 1911, Ir. K.B. 573, *re* repairs to undedicated roads; *Rex* (*Gatti*) v. *Lyon*, 1922, 1 K.B. 232, *re* Shakespeare plays for children; *Rex* (*Harrison*) v. *Lyon*, 1921, 1 K.B. 203, *re* non-deduction for superannuation fund.

There seems little prospect now of the carrying out of the recommendations of the Joint Committee on Municipal Trading which was appointed by the two Houses of Parliament in 1902, to the effect that the accounts of all local authorities should be subject to a uniform system of audit by professional accountants appointed by the authority themselves with the approval of the Minister of Health.

By the Audit (Local Authorities) Bill, which passed its second reading in the House of Commons on the 15th inst. by 229 votes to ninety-four, and has been described as a "plan to protect the ratepayers from spendthrifts," it is proposed to disqualify for five years any member of a local authority who has been surcharged up to £500 or over by district auditor. This is a Government Bill, should become law before long, and will have the hearty support of all who consider the present effect of surcharges ineffectual in preventing extravagance in local government.

A Conveyancer's Diary.

By Sir BENJAMIN CHERRY, LL.B.

(One of the Conveyancing Counsel to the Court.)

Local Deeds Registries.

Some correspondence has appeared in *The Times* suggesting that the Middlesex and Yorkshire Deeds Registers should be closed by Act of Parliament. One proposal is that, as respects Middlesex, an Order in Council should be made introducing compulsory registration of title in that county, which would have the effect of closing the deeds register in regard to land, when the title was registered. Save at the instance of the county council, such an order cannot be brought into force for ten years after 1925: L.R.A., 1925, ss. 120, 121. This was part of the arrangement made by the Government of the day, with a view to the testing of the two systems of conveyancing, thus the proposal may be ruled out as being outside practical politics.

There is, however, a good deal which may be said in favour of the other proposal, namely, that the deeds registers in both counties should be closed as no longer serving any purpose, which cannot equally be met by leaving the registration of land charges, etc., under the L.C.A., 1925, to take the place of registration by memorials.

It is not a fact that any duplication of protective registration is authorised, but it appears to be much cheaper to register a land charge, etc., than to register a memorial of a document relating to the transfer, creation or devolution of a legal estate. Besides, after, say thirty years or less, a certificate of search under the L.C.A., 1925, would be sufficient without a search in the deeds register.

This proposal, it is conceived, would not invoke any serious opposition in Middlesex, but strenuous opposition would obviously come from each of the Riding councils.

It is generally understood that one of these councils makes a very large net profit, amounting to at least £10,000 a year, from the registration of memorials. When the public hear of this, it may begin to wonder whether the register is maintained for their benefit or as a source of income for the local authority. This suggests some further questions. Why have no new rules for registration of memorials in the three Ridings been made for carrying out the provisions of L.P.A., 1925, s. 11, as has been done in the case of Middlesex? Do the Riding councils fear (apparently without sufficient reason) that such rules would unduly reduce their profits? Are any of these councils continuing to register memorials of documents relating to equitable interests, besides those authorised by L.C.A., 1925, s. 10 (6), as amended? Incidentally, it may be mentioned that no rules at present appear to prescribe expressly the manner in which these equitable interests are to be registered in a Riding deeds registry. The above are matters which primarily concern owners, lessees and mortgagees of land in Yorkshire. When they grasp the situation, it is possible that they will press either for the closing of the Riding registers or for new rules and fee orders to be made. It must, however, be remembered that Yorkshire is proud of its local registers, which, whether or not unnecessarily expensive or useless at the present time, served it well in the past.

Landlord and Tenant Notebook.

(*Continued from p.* 484).

"Market" to be Distinguished from "Sale."

"Land is generally used for the purpose of producing something to be sold, but according to the old idea which seems still to influence our language, a market is a place where people—house, wives and others—go to buy commodities, daily or weekly. Now, in that relation there is perhaps room for a distinction which is discriminatory in the present case. According to the popular conception alluded to, a market is a place where things, such as fruit, vegetables, *or, it may be flowers*, are bought for consumption. On the other hand, it is not thought that we are disposed to regard as coming within the category of market gardens places where plants or trees or flowers are grown, *not for sale for consumption, but for sale in order that they may be planted elsewhere*. If there is anything in that distinction, clearly the bulb farm here in question is not a market garden."

From the above *dicta*, it would appear that Lord Sands took the view that land used for growing flowers might constitute a market garden, but that the land in question in *Watters* v. *Hunter* did not constitute such a garden, because, *inter alia*, the land was not used for growing flowers, to be sold for consumption, but was used for experimental purposes, the flowers that were produced being sold to other persons for the purpose of being planted elsewhere. Lord Sands, however, would appear to have concluded his judgment on this point by basing his opinion, that the land was "not a place, which in accordance with the ordinary use of language, one would describe as a market garden," *ib.*, at p. 236.

Some of the other members of the Court in *Watters* v. *Hunter* also appear to have taken a similar view to that taken by Lord Sands, i.e., that land used for growing flowers might constitute a "market garden." Thus, Lord Blackburn said, *ib.*, at p. 236: "I concur with what Lord Sands has said as to the possibility of a garden, which is conducted solely for the purpose of raising flowers for sale in an adjacent market, being a market garden within the meaning of the Act. But every case must depend upon its own circumstances."

Perhaps the most useful and general definition of the expression "market garden" is to be found in the judgment of the Lord President in *Watters* v. *Hunter*, *ib.*, at p. 235.

The learned Lord President said: "I think the terms market garden' and 'market gardening' as used in the [Agricultural Holdings] Act of 1923 must be interpreted according to their ordinary meaning in popular language. *The trade or business of a market gardener is, in my opinion, the trade or business which produces the class of goods characteristic of a greengrocer's shop, and which in ordinary course reaches that shop via the early morning market where such goods are disposed of wholesale.* It is no doubt the case that this class of goods includes small fruit, and it may be flowers."

It is submitted, therefore, especially on the strength of the above *dicta*, that land used solely for the purpose of growing *flowers* may constitute a "market garden" for the purposes of the Agricultural Holdings Act.

Implied Warranty of Fitness on Letting of Furnished House.

The letting of furnished premises, as far as implied warranties are concerned, differs in one important respect from the letting of land or unfurnished premises.

Where land, or unfurnished premises, is or are demised, there is no implied warranty at all by the lessor as to the physical condition of the land or premises demised, and there is not even an implied warranty that the land or premises are fit for the purpose for which they have been let. The principle was thus expressed by Mellish, L.J., in *Erskine* v. *Adeane*, L.R. 8 Ch. App., at p. 761: "The law of this country is that a tenant, when he takes a farm, must look and judge for himself what the state of the farm is. Just as in the case of the purchaser of a business the rule is *caveat emptor*, so in the case of a lease of property, the rule is *caveat lessee*; *he must take the property as he finds it*": cf. also *Cheater* v. *Cater*, 1918, 1 K.B. 247, 252.

The Rule with regard to Leases of Land and Unfurnished Premises.

Again, in *Hart* v. *Windsor*, 12 M. & W., at pp. 86-88, Parke, B., in delivering the judgment of the court, said: "It appears . . . to be clear upon the old authorities, that there is no implied warranty on the lease of a house or of land, that it is or shall be reasonably fit for habitation or cultivation. The implied contract relates only to the estate, not to the condition of the property . . . *There is no contract, still less a condition implied by law on the demise of real property only, that it is fit for the purpose for which it is let.* The principles of the common law do not warrant such a position, and though in the case of a dwelling-house taken for habitation, there is no apparent injustice in inferring a contract of this nature, the same rule must apply to land taken for other purposes, for building upon, or for cultivation; and there would be no limit to the inconvenience which would ensue. It is much better to leave the parties in every case to protect their interests themselves by proper stipulations, and if they really mean a lease to be void by reason of any unfitness in the subject for the purpose intended, they should express that meaning."

Where, however, premises are let furnished, the principle of law is diametrically opposed to that which obtains in the case of a lease of land or unfurnished premises. As the nature and effect of this principle is sometimes misunderstood, it may be of advantage to examine what the principle in the case of furnished lettings really amounts to.

The leading case is *Smith* v. *Marrable*, 11 M. & W. 5. There a house at Brighton had been let furnished for a short period of five weeks. The house was found to be infested with bugs, and eventually the lessee left the premises after having lived there for only a week. It was held that the lessee was entitled to do so, and was not liable for rent or for use and occupation on the ground that when premises are let furnished there is an implied condition—and not a mere warranty—that the premises are in a state "fit for decent and comfortable habitation."

The *ratio decidendi* of *Smith* v. *Marrable*, and the grounds of the distinction in this respect between leases of furnished and leases of unfurnished premises or land, is admirably set out in the judgment of Lord Abinger, C.B., and Parke, B., in *Sutton* v. *Temple*, 11 M. & W. 52, at pp. 60-65. Thus Lord Abinger explained *Smith* v. *Marrable* as being the case of a contract of a mixed nature—for the letting of a house *and furniture*. "In such a case," the learned judge added, "the contract is for a house and furniture *fit for immediate occupation*, and can there be any doubt that if a party lets a house and the goods and chattels or the furniture it contains, to another, that must be such furniture as is fit for the use of the party who is to occupy the house? . . . If a party contract for the lease of a house ready furnished, it is to be furnished in a proper manner, and so as to be fit for immediate occupation. Suppose it turn out that there is not a bed in the house, surely the party is not bound to occupy it or to continue in it. So also in the case of a house infested with vermin; if bugs be found in the beds even after entering into possession of a house, the lodger or occupier is not bound to stay in it. Suppose again the tenant discovers that there are not sufficient chairs in the house, or that they are not of a sort fit for use, he may give up the possession of the house. The letting of the *goods and chattels*, as well as the house, implies that the party who lets it so furnished is under an obligation to supply the other contracting party with whatever goods and chattels may be fit for the use and occupation of such a house according to its particular description, and suitable in every respect for his use."

Again, Parke, B., likened *Smith* v. *Marrable* to the "case of a ready furnished room in an hotel, which is hired on the understanding that it shall be reasonably fit for immediate habitation," adding that in such a case "the bargain is not so much for the house as the furniture, and it is well understood that the house is to be supplied with fit and proper furniture, and that if it be defective the landlord is bound to replace it" (*Sutton* v. *Temple*, 12 M. & W., at p. 65).

Reviews.

Notes on Perusing Titles and on Practical Conveyancing. By LEWIS E. EMMET. 11th Edition. Volume II. London: The Solicitors' Law Stationery Society, Ltd. 1927. clxxii and 1189 pp. (in two volumes). £2 10s. (two volumes).

No one who bears in mind how far-reaching the 1922-1925 conveyancing changes are, and that the tasks of estimating their range and writing the two volumes have been accomplished after office hours, can possibly have the heart to grumble at the few months' delay in the appearance of Mr. Emmet's invaluable conveyancing notes. And no one who reads these notes, now that they are available, will, we venture to think, have the least cause to be displeased with them. In fact, for general use in solicitors' offices we doubt whether any better work has been published. It is written by a solicitor who is obviously familiar with the problems which he discusses and who approaches his subject from the practising solicitor's point of view.

Like all other authors and editors of books on real property and conveyancing published since 1925, the author has had practically to rewrite the whole of the two volumes. He is to be congratulated on the general success of his labours.

Three parts are contained in this second volume. Part III which deals with Recitals, Consideration and Powers to give Receipts, Parcels, Habendum, Execution, Stamps, Searches, Registration and Acknowledgments; Part IV which is given to Wills, Personal Representatives, Trusts and Trustees and

Death Duties; Part V of which the subject-matter is Copyholds. In addition, there are Tables of Cases and Statutes, a reprint of the Law of Property (Amendment) Act, 1926, with brief annotations, and a supplement containing some twenty-three pages of *Addenda et Corrigenda* which include notes of the more important of the recent cases. The Index extends to over 120 pages, and is adequate. Our own view is that those who complained (see Preface) were right: *some* scheme of arranging the sub-headings is better than none at all.

Attention may be drawn to one or two points of general interest. On page cl (correction to p. 479, l. 23) it is observed that there is nothing in the repeal of s. 32 of the Fines and Recoveries Act, 1833, "to prevent an appointment of a person to be protector *when there would otherwise be no protector*, and thus save an application to the court under s. 33 of the Act." Surely the result of the repeal is that only one kind of protector remains recognised under the Act, namely, the first life tenant under the settlement creating the entail. We agree with the suggestion that the application to the court might well be saved in certain cases, e.g., by allowing nomination of Settled Land Act trustees to be protectors in cases where there are no tenants for life (just as such trustees have been given Settled Land Act powers as statutory owners).

Readers should note on pages cxxiv, cli and clxi that the Court of Appeal have reversed *Re Ryder and Steadman's Contract*: our views on this case will be seen on 71 Sol. J., p. 444; at which page also will be seen our views on *Re Trollope*.

Private Law Sources and Analogies of International Law (with Special Reference to International Arbitration). By H. Lauterpacht. London: Longmans, Green & Co. 1927. xvi and 326 pp. 25s.

In his foreword to this new work, which records the results of a scholar's investigation in a somewhat neglected field, Dr. A. D. McNair observes that Dr. Lauterpacht's book does at least two things of real value. In the first place it thoroughly explores "the justification of that part of Art. 38 of the Statute of the Permanent Court of International Justice which directs the Court to apply, amongst other rules, 'the general principles of law recognised by civilised nations.'" Secondly, it brings together a mass of legal material extracted and classified from awards and proceedings of international tribunals, and which will afford useful guidance to those engaged in the preparation and pleading of cases before international tribunals. Dr. McNair's observations strike us as a cautious estimate of the value of a careful and praiseworthy piece of research work.

The author dissociates himself from the band of publicists who at every opportunity decry recourse to private law analogies. On the contrary, he commends generally "the beneficial influence" which the use of private law has in the great majority of cases exercised upon the development of international law. "In other cases," he points out, "international law ultimately adopts solutions suggested by private law, without paying regard to the so-called special character of international relations; it adopts, even now, notions of private law whenever exigencies of international life seem to demand such a solution; . . . in international arbitration the recourse to private law, on the part both of governments and of tribunals, is a frequent feature of the proceedings and of the decisions."

Dr. Lauterpacht's book will, we think, be found to be of particular value to at least three classes of readers. In the first place, those interested in the history and general theory of international law will find in it a scholarly discussion of certain important doctrines such as sovereignty and the sources and subjects of international law. They will obtain up-to-date information, gathered in particular from German, French and Italian works, on the progress of modern Continental ideas upon such doctrines. Secondly, students may profitably use it as a text-book in the study of most topics comprised within the subject of the international law of peace, for example, such subjects as treaties, acquisition and loss of territory, state servitudes, state succession and state responsibility. And thirdly, the practitioner in this somewhat restricted sphere will find that about one-third of the book is devoted to an analysis of arbitration cases. This part gives a full account, based upon a study of the original documents, cases, counter-cases, arguments and oral pleadings, of cases of judicial settlement of international disputes from the first British-American arbitrations at the end of the eighteenth century to the recent decisions of the Permanent Court of International Justice.

Godefroi on the Law of Trusts and Trustees. Fifth Edition. By Harold Greville Hanbury. London: Stevens and Sons, Ltd. 1927. cxlx and 827 pp.

Though the Trustee Act, 1925, is not so sweeping in its innovations as the other new property statutes, the changes which it has wrought are numerous and extensive enough to make a post-1925 edition of "Godefroi" generally welcome. Mr. Hanbury, with perhaps too conscientious a respect for the virtues of the past, has endeavoured to conserve the old material as far as possible, fitting the new provisions in the most convenient places as he went along. Parts which would not bear such a process of patching he has, however, re-written or supplemented with explanations of the law as it stands at present.

The task of bringing up to date the case law affecting trustees seems to have been very well performed, but one or two minor criticisms may be made as to the revision necessitated by new statute law. Whilst it may be "convenient" to the editor, and to some of the readers, to continue to refer to certain landmarks of the old law, such as the Statute of Frauds, and s. 3 of the Judicial Trustees Act, 1896, it may well mislead other readers to overlook the repeal of those old authorities by the 1925 legislation.

On p. 395 a section of the Trustee Act, 1925, is made to refer to s. 1 of the Vendor and Purchaser Act, 1874, repealed when the 1925 Act came into force; though by way of second thoughts, as it were, the Law of Property Act, 1925, s. 44, now the governing authority, is afterwards mentioned in brackets.

Again, a tendency is shown to leave the *ipsissima verba* of some of the sections of the new enactments to explain themselves: see, for example, pp. 22, 23 (Trustee Act, 1925, s. 18), and p. 313 (*ib.*, s. 13).

The pruning scissors might well have been more severely used in certain parts, e.g., on pp. 316-317, to cut out the obsolete parts relating to consents on sale of land. Finally, one or two of the new statutory provisions have been overlooked. Thus, on p. 321, it is stated that "trustees should stipulate for payment in cash only; the price of the estate sold should not be paid in the form of an annuity or rent-charge." But see Settled Land Act, 1925, s. 39 (2)-(5); and trustees for sale, in relation to land, have all the powers of a tenant for life under the Settled Land Act.

The New Property Code. (Comprising the Property and Consolidation Acts, 1922-1926, with special reference to their effect on the law relating to the sale and purchase of land). With a Revision of "Williams on Vendor and Purchaser" (Third Edition). By Geo. H. Devonshire. London: Sweet & Maxwell, Ltd. 1927. xxxi and 844 pp.

In his Preface to the third edition of "Williams on Vendor and Purchaser," Mr. Cyprian Williams foreshadowed the publication of a "Supplementary Volume" as soon as the conveyancing changes, then "in the air," crystallised. Such a supplement is now ready. It is not, however, the work of the learned editor of "Williams," but that of another distinguished conveyancer of Lincoln's Inn.

As one might naturally expect, Mr. Devonshire found it impracticable to write a supplement in the form of a mere commentary or a list of *corrigenda et addenda* to the third edition of "Williams." The plan he has adopted is to write a preface in the form of an elaborate outline of the effect of the new Property Legislation—taking each statute in turn and giving a detailed explanation of its effect—and then proceed to revise the text of "Williams" where such revision was considered necessary. This method of treatment is naturally not an ideal one, but it seems to have several things in its favour. It saves the expense of a complete new edition of a large two-volume work. Further, a line has in actual practice to be drawn between pre-1926 and post-1925 conveyancing in tracing titles; hence it may frequently happen to be extremely convenient to have the practices before and after the commencement of the new Acts kept distinct. Finally, this particular method of treatment serves to emphasise what is new to those who are already familiar with the old practice. The outline has been carefully prepared; the effect of the statutory changes seem to have been very well gauged; and the difficult task of revising appears to have been satisfactorily negotiated. Those who rely on "Williams on Vendor and Purchaser" will find this Supplement indispensable; others will find in it a reliable guide to the new conveyancing.

Books Received.

Private Law Sources and Analogies of International Law. With special reference to International Arbitration. H. LAUTERPACHT. pp. xxiv and 326 (with Index). 1927. Longmans, Green & Co. Ltd., 39, Paternoster Row, E.C.4, New York, Toronto, Bombay, Calcutta and Madras. 25s. net.

Correspondence.

The Law, The Advocate, and The Judge.

Sir,—Mr. Justice McCardie in his recent reading at the Middle Temple, alluded to the long interval of time which has elapsed since readings ceased to be given in hall by holders of the Reader's office, and mentioned that the occasion of his reading may be regarded as the renaissance of this ancient practice at the Middle Temple.

As reference has been made to this in the Press (see *The Times*, 27th April, 1927, p. 3, col. E.), suggesting that other revivals of reading in hall have occurred in modern times at the Middle Temple, the following details will be of interest. In support of that view two incidents are relied upon. The first of these occurred in 1850 when Mr. (later Sir) George Bowyer, a well-known legal author, delivered, in the Middle Temple Hall, lectures on law, which were published in the following year; the second occurred in 1912, when, pursuant to a resolution of a Parliament of the Inn, passed on 1st March, five historical lectures on specified subjects were delivered in the hall. The first of these lectures, entitled "The Legal Quarter of London," was given on 22nd April of that year by the late Master Blake Odgers, K.C., then Lent Reader of the Middle Temple, and also Director of Legal Studies for the Inns of Court; to which last-named office he had been appointed in 1905.

As regards the lectures given in 1850, it should be pointed out that Mr. George Bowyer was not a Bencher of the Inn, and never held the ancient office of Reader. His appointment to be lecturer was made in 1849 as an experimental revival of the former and inferior office of Reader to New Inn, the Inn of Chancery, then belonging to the Middle Temple; and under a special order, he was directed to give his lectures in the Middle Temple Hall instead of at New Inn. Further, during the year 1850, while he held his office (at a salary), two Benchers of the House, Messrs. Samuel Martin and Charles Howard Whitehurst, were elected Readers as usual for Lent and autumn respectively, neither of whom gave any reading.

It may be conceded that Master Blake Odgers, an enthusiastic and valued member of the Bench of the Inn, suggested the lectures given in 1912 (though the official records of the Inn do not so state), but they must have been initiated by him rather in his capacity of Director of Legal Studies than as Reader, for four of them were given by gentlemen who did not hold that office, and three of whom were Benchers of other Inns. These lectures, together with a sixth and final lecture, delivered by Master Blake Odgers himself (24th June), on "Literary men connected with the Inns of Court and Chancery," were published the same year by Messrs. Macmillan, in a single volume, and in the preface to that volume Master Blake Odgers referred to them all as a revival of the ancient readings. This in the true sense, they obviously were not, for the ancient readings were always given by a member of the house elected to the Reader's office, and not by visitors from other societies. Moreover, the example set by Master Blake Odgers established nothing, for it was not followed by his successors in the office of Reader; whereas in the present case the reading of Mr. Justice McCardie has been delivered as the first of a series intended to re-establish the practice of public reading by a Reader of the house in the hall of the Inn, discontinued as a regular incident in the routine of its life since the year 1680. It therefore seems appropriately described as the renaissance of the ancient practice.

3 Elm Court, Temple, E.C.4.
22nd June.

J. BRUCE WILLIAMSON.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

UNDIVIDED SHARES—TWO TENANTS IN COMMON—DEATH OF ONE BEFORE 1926 INTESTATE—LETTERS OF ADMINISTRATION GRANTED AFTERWARDS—TITLE.—Q. 837.

838. *Q.* What you say in *Q.* 837 agrees with the conclusions at which we had arrived, subject to this, that you appear to suggest that the appointment of trustees under para. 1 (4) (iii) should be by B and one or more of C's children jointly. We suggest that B alone has power to appoint, seeing that he is a person interested in more than one-half of the land or the income thereof. One-half he is entitled to as original tenant in common with A, and he is also entitled to a share in A's half as one of his next of kin. We shall be glad to know if you agree with this conclusion, and also whether, in your opinion, it would be in order for B to appoint himself alone as trustee. We take it that there would be no objection to his appointing himself jointly with another person, but we are not clear as to whether the appointment of himself alone would be valid.

A. It is stated in the question that C was A's heir, and therefore, since A died intestate in 1925, B took no interest in C's real property. The answer to *Q.* 837, in respect of the persons to appoint, must therefore be confirmed. The opinion is given that B can join to appoint himself, see the point discussed SOL. J., Vol. 70, *Q.* 498, p. 1040.

RENT-CHARGE—MORTGAGE OF LAND SUBJECT TO CHARGEE—SALE UNDER POWER—TITLE.

839. *Q.* In August, 1925, Jones, who is the owner of two houses free from chief or ground rent, sells one house to Brown in fee simple and creates a yearly rent-charge of £5 on such house. In the conveyance there are included the usual covenants and conditions inserted in a conveyance creating a rent charge. The next day, Brown mortgages the same house back to Jones to secure a sum of money advanced by Jones to Brown. The position, therefore, on the 1st January, 1926, is that Brown is the estate owner in respect of the fee simple, whilst Jones takes by way of demise for a term of years; further, Jones is the chief rent owner. Brown in the early part of 1926 makes default in payment of his chief rent and mortgage interest, so that Jones in the latter instance has the right to exercise his powers as mortgagee. Jones has agreed to sell the property under his power of sale as mortgagee to Smith, and the question arises as to where the fee simple is. As to the precedent in "Key & Elphinstone," Vol. 1, p. 553, at p. 474, No. 14, that "Jones has agreed with Smith for the sale and transfer of the estate in fee simple of Brown in the said property"; does this mean that the fee simple has automatically passed from Brown to Jones by reason of Brown's default under the mortgage? If so, will this have the effect of causing a merger of the chief rent of £5, so that on any sale of the property, Jones will have to create a new rent?

A. On 1st January, 1926, the situation was that Jones held the rent-charge as a legal interest (see L.P.A., 1925, s. 1 (2) (*b*)) for a term of 3,000 years subject thereto, under the 1st Sched. Pt. VII, para. 1, and Brown held the fee subject to the rent-charge and the term, which was a legal estate under s. 1 (1) (*b*). Brown was and is reversioner of the term, which cannot therefore have merged in the rent-charge (or *vice versa*). In the circumstances, Jones can sell Brown's interest under ss. 101 (1) (i) and 104 (1), the mortgage term being extinguished under s. 88 (1) (*b*). If he does this the purchaser will obtain the fee subject to the rent-charge, but of course Jones may also release the rent-charge and so sell the unincumbered fee simple if he pleases. Under neither old nor new law does the mortgagor's estate automatically vest in the mortgagee's on every default.

SETTLED LAND—S.L.A., 1925, s. 1 (1) (v)—DEATH OF ANNUITANT—TITLE.

840. *Q.* I am acting for the purchaser of a small freehold property, and the vendor purports to sell as beneficial owner. The title discloses the will of a testator who died on the 16th December, 1899. The will is dated the 13th August, 1898, and by it the testator gave to the vendor all his real and personal estate (which includes the property now sold) absolutely, "but subject during the life of my niece (naming her) to pay to her for her sole and separate use and so that she shall have no power to deprive herself thereof in any way by anticipation the net annual rent received for the dairy and premises (describing them) and upon her death the same property to belong to" the vendor absolutely. The vendor was appointed sole executor and the will was proved on the 2nd April, 1900. Testator's niece died on the 4th March, 1927. The "dairy and premises" are comprised in the property now sold. I shall be obliged by your opinion as to whether the whole of testator's real property was charged with the payment to his niece of the said rent, and, if so, whether on the 1st January, 1926, the property was settled (see S.L.A., 1925, s. 1 (1), (5)). Also whether, as the niece died on the 4th March, 1927, the vendor can now sell as beneficial owner under the Law of Property (Amendment) Act, 1926, without any further formality?

A. An opinion on the construction of a will which is not seen as a whole can only be provisional, but the purchaser's safer alternative would be to assume the whole residue was charged, which would bring the case under the S.L.A., 1925, s. 1 (1) (v), on 1st January, 1926. If, however, the whole of the rent of the dairy and premises was paid to the niece during her life (a fact which the vendor must prove by producing at least the last receipts) the situation nominally requires that the vendor as now entitled absolutely can require a conveyance from himself as tenant for life under s. 7 (5). If he gives beneficial owner covenants on the recital that he is absolutely entitled, the purchaser may dispense with this formality, see answer to *Q.* 244, vol. 70, p. 541, and *Page* v. *M.R. Co.*, 1894, 1 Ch. 11.

L.P.A., 1925, s. 149 (3) & (5).

841. *Q.* A granted to B a lease of certain premises for ninety-nine years from 29th September, 1914, at an annual rent. Subsequently A granted to B leases of adjoining premises for ninety-nine years from 29th September, 1924. In order to make the terms the same length A now proposes to grant to B a reversionary lease of the first premises for ten years from 29th September 2013. Would such a lease be void under s. 149 of the L.P.A., 1925? It is a lease to take effect in reversion expectant on a longer term. But why does sub-s. (5) refer to a *longer* term and not to an existing term? If the proposed lease would be void, the transaction, which is an ordinary business transaction, can, presumably, only be carried into effect by a surrender of the existing lease and the grant of a new one for the extended term.

A. The point raised involves some rather difficult technicalities in real property law, but sub-s. (3) appears to be directed

to destroy the effect of *Mann, Crossman, etc.* v. *Land Registrar*, 1918, 1 Ch. 202, and sub-s. (5) to confirm *Re Moore & Hulme's Contract*, 1912, 2 Ch. 105. If A grants B a lease to commence at once for the longer term subject to B's present lease the object desired will be attained without infringing sub-s. (3), though, having regard to the larger stamp duty, the surrender and re-grant would be little more expensive and perhaps more satisfactory.

SETTLED LAND—TENANTS FOR LIFE IN UNDIVIDED SHARES. SALE—TITLE—L.P.A., 1925, 1ST SCHED., PT. IV, PARAS. 1 (3) AND 4—L.P.(AM.)A., 1926.

842. *Q.* A testator by his will, dated 1883 (and who died in 1887) appointed his wife and A and B to be executors and trustees thereof. Testator gave, devised and bequeathed unto his trustees his real and personal estate, upon trust to convert his personal estate into money and to invest the same, and to stand seised and possessed of his real and personal estate, upon trust to pay the income of his personal estate and the rents of his real estate to his wife for life, and upon her death to pay the said income and rents unto and equally between his three daughters for their lives, and as to each daughter's share after her decease in trust for her children equally. Testator authorised and directed his trustees and the survivor at any time they saw fit to sell any part of his real estate, and declared that the receipt of his executors and trustees for the time being of his said will should be a sufficient discharge to protect a purchaser. He also gave power to surviving trustees to appoint new trustees. The above will was duly proved in 1888 by the three executors named. Testator's wife died many years ago. B died in 1926, leaving A the sole surviving trustee. The three daughters are still alive and each receiving a third share of the income of the estate (including rents). They have no children, are unmarried, and of advanced age. Some of the real estate was sold prior to 1923, and it is now desired to sell a further part of the real estate, and the question arises as to what documents are necessary to complete the title, and who shall sell and convey.

(1) Does the surviving trustee hold on trust for sale under L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (3), and if so, after the appointment of a new trustee, would the tenants for life have to re-vest the legal estate in the trustees, or would they convey the legal estate by the direction of the trustees. Presumably para. 4 in the amendment to Pt. IV of Schedule 1 would not apply, as the entirety of the land does not go together after the death of the life tenants.

(2) Or will the tenants for life sell as such, in which case it is presumed that there will be first a new appointment, and secondly, a vesting deed? What reference to the vesting of the property will the appointment contain, as this is presumably already vested in the tenants for life?

(3) On the death of the tenants for life or any of them there is presumably an intestacy as to each share, and each tenant for life, or their estate, will receive a third share of the testator's estate, and can dispose of the same by will?

A. (1) Whatever the realities may be, the legal hypothesis is that each of the aged daughters may marry and have children, in which case the entirety of the land would not devolve together. This being so, the opinion here given is that the new para. 4 does not, but para. 1 (3) does, apply, *see re Colyer's Farmingham Estates, ante*, p. 351. Since it operated to vest the land in the trustees on the statutory trusts, no re-vesting is necessary, and A will vest the legal estate in the land in himself and the new trustee under the T.A., 1925, s. 40 (1). See point (5), *Q.* 590, p. 15, *ante*.

(2) No, as above.

(3) Yes, if the testator left no sons or issue of sons.

MORTGAGE TERM—STATUTE OF LIMITATIONS—TITLE.

843. *Q.* In 1898 A.B. demised a freehold house by way of mortgage for a term of 1,000 years at a peppercorn rent, if demanded, to C.D., treasurer of certain free loan moneys to secure the repayment of £100, part of the said free loan moneys. In the mortgage power was given to the treasurer, his executors, administrators or assigns, or the treasurer for the time being of the said free loan moneys, to take possession and to receive the rents, and also to sell the property after three months' notice, and to give receipts for the purchase money, also to charge interest at 5 per cent. per annum from the time of giving notice requiring payment. Notice requiring repayment was given in 1907, and default having been made the treasurer for the time being has since been in undisturbed possession of the property. A.B. subsequently became bankrupt and has since died. In the year 1915 C.D. died and the trustees of the charity appointed his son D.D. treasurer of the free loan moneys in his place. The trustees of the charity have now asked D.D. to sell the property and he has an offer for it. To give a title to the purchaser it would appear that the following steps are necessary: (1) an enlargement deed by D.D. under s. 88 (3) or [query] s. 153 of the L.P.A., 1925, declaring that the term of 1,000 years is now enlarged into a fee simple; (2) as D.D. will then hold the property in trust for the charity, is it necessary for him to appoint another trustee before he can give an effective receipt to the purchaser? If so, can this be done either by the enlargement deed or the conveyance, or must it be done by separate deed? The amount involved is only £85.

A. C.D. held the term upon trust for the proprietors of the loan moneys. This being so, there would seem to have been nothing to prevent the operation of s. 30 of the C.A., 1881, on C's death, vesting the term in his personal representatives holding on the same trusts. Assuming that the owners of the loan moneys were not incorporated, the L.P.A., 1925, 1st Sched., Pt. II, para. 7 (*f*), would prevent the application of para. 3, and C.D.'s personal representatives therefore still hold. When D.D. and another are duly appointed trustees of the mortgage moneys by such personal representatives under the T.A., 1925, or otherwise, the latter can transfer on the recital that the transferees are entitled in equity to the mortgage moneys, and the better plan would be for the transferees then to enlarge the term under the L.P.A., 1925, ss. 88 (3) and 153 (3), unless the freehold is sold without such enlargement under the power in the original deed. Possibly even, on the written request of the responsible officers of the loan club, C.D.'s representatives might sell under the T.A., 1925, s. 18 (2) and hand the proceeds to D.D. and the title would be in order under the L.P.A., 1925, ss. 104–107. The last method would require one deed only, and so probably be the least expensive.

MORTGAGE TERM—STATUTE OF LIMITATIONS—TITLE.

844. *Q.* As to *Q.* 844, the trustees of the free loan moneys are not incorporated, so you advise that the term of 1,000 years became vested in the personal representatives of C.D. on his death and not in D.D., the new treasurer appointed in his place. This being so, can the two executors of C.D. sell to a purchaser the remainder of the term under the power in the mortgage discharged from the right of redemption, and can the purchaser in the same deed by a declaration at the end declare that the term has become a fee simple under the Conveyancing Act, 1881? The executors would then hand over the proceeds to D.D. This would appear the simplest way if it can be done, as we see difficulty if the executors of C.D. have first to execute an enlargement deed containing a recital (as in "Prideaux's Precedents," Vol. I, at p. 898) that C.D. and subsequently themselves have remained in uninterrupted possession and consequently became the absolute owners, as in fact after the death of C.D. the new treasurer D.D. appointed by the trustees of the free loan moneys received the rents on their behalf.

A. The "uninterrupted possession" of the mortgagees under the recital above would no doubt be construed to mean the possession of such mortgagees and persons deriving

title under them (whether licensees, agents, beneficiaries, or assigns) as in the L.P.A., 1925, s. 205 (1) (xvi), uninterrupted by the mortgagor or persons deriving title under him as mortgagor, or entitled to redeem the mortgage. The opinion is therefore here given that the recital would in no wise be misplaced either as a statement made by the executors or the purchaser. D.D.'s possession was, of course, under the former and adverse to the mortgagor. The proposed declaration will be under the L.P.A., 1925, s. 88 (3), and not under the C.A., 1881.

High Court—Chancery Division.

Brooks *v.* **Wilkins.** Eve, J. 27th April.

PRACTICE—PROCEDURE SUMMONS—SECURITY FOR COSTS—ADDRESS OF PLAINTIFF ON WRIT—NO PERMANENT RESIDENCE—LIVING IN A CARAVAN—R.S.C. ORD. IV, r. 1.

Security for costs will not be required from a plaintiff who has no permanent residence where there is no intention to mislead the court.

This was an adjourned procedure summons taken out in an action in which the plaintiffs' claim was for payment of £65 in respect of money due to them under an agreement with the defendant and damages for breach of the same. The summons was by the defendant and asked that the plaintiffs should be ordered to give security for costs on the ground that C.M., one of the plaintiffs, had given an insufficient and incorrect address in the writ. His address was given as "The Carnival Hall, Walthamstow, in the County of Essex." At that time he was doing business as a travelling showman at this hall, and was living in his caravan close by. According to the evidence he had no permanent residence, and had no intention to deceive. His business was to tour the country in a caravan, but he had kept his solicitors informed of his whereabouts. The defendant was lessee of the Carnival Hall. It was contended on behalf of the defendants that the personal residence of the plaintiff must be given and not his business address, and *Stoy* v. *Rees*, 24 Q.B.D. 748, and *Knight* v. *Ponsonby*, 1925, 1 K.B. 545, were referred to. On the other hand it was argued on behalf of the plaintiffs that where there was no intention to deceive, the court would not order security for costs to be given.

EVE, J., said that it was rightly contended that under Ord. IV, r. 1, the personal residence of the plaintiff and not the business address must be indorsed on the writ; but the question he had to decide was whether in the circumstances of the present case this plaintiff should be required to give security for costs. He was quite satisfied that the plaintiff had no intention to deceive, and that being so there was nothing which would warrant him in making an order that security for costs should be given. The plaintiff led a migratory life, and had no permanent residence. It was not a case where he had abandoned his permanent residence, but his method of life was that of a mariner or other person of migratory habits. His lordship therefore made no order on the summons, and directed that the costs should be the plaintiffs' in any event.

COUNSEL: *Viscount Erleigh; Manning*, K.C., and *J. Tanner*.

SOLICITORS: *Docker, Andrew & Co.; Steadman, Van Praagh & Gaylor*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

James Durnford and Sons Limited *v.* **Great Western Railway Company.**

MacKinnon, J. 17th May.

ACCIDENT — NEGLIGENCE — CLAIM FOR DAMAGES — PRELIMINARY POINT OF LAW—AGREEMENT—CONSTRUCTION OF INDEMNITY CLAUSE—INDEMNITY AGAINST CLAIMS BY THIRD PARTIES ONLY.

A gave to B an indemnity against all claims and demands arising out of or in connexion with the existence or user of a portable gangway which A used over B's railway lines. A's gangway and a motor lorry on it were damaged through the negligence of B's servants.

Held, that the indemnity given by A was only one to hold B harmless against claims by third parties, and did not include the abandonment of claims by A.

An action was brought to recover damages for negligence, and an order was made that a preliminary point of law relating to the true construction of an agreement between the parties should be decided by the judge taking the special paper. The facts of the case were as follows: The Great Western Railway Company let certain premises at Bristol to the plaintiffs in 1914. The plaintiffs, being contractors and requiring to transport large quantities of materials by rail, constructed a portable gangway to facilitate their operations. This gangway could be moved over certain railway lines belonging to the defendant company, and the plaintiffs were given permission to use the gangway upon certain terms which were embodied in a memorandum drawn up in 1921 and endorsed on the plaintiffs' lease. On the 27th August, 1926, whilst the plaintiffs were using the gangway for the purpose of discharging lime from a motor lorry into a railway truck some trucks were shunted down the line over which the gangway was standing. The gangway was struck and destroyed and the motor lorry thrown to the ground and badly damaged. The plaintiffs claimed damages for negligence and/or breach of duty. The defendants denied liability and relied on a condition in the memorandum of 1921, which stated: "(The plaintiffs) agree and undertake to indemnify the said company against all claims and demands or liability whatsoever whether in respect of damage to person or property arising out of or in connexion with the existence or user of the said gangway." Counsel for the defendants contended that the words "claims and demands or liability whatsoever" covered all claims however caused and by whomsoever made. The wording of the condition showed that the railway company intended to protect themselves against that very kind of accident. He referred to *Travers* v. *Cooper*, 1915, 1 K.B. 73; *Rutter* v. *Palmer*, 66 SOL. J. 576; 1922, 2 K.B. 87; and *Ashendon* v. *London, Brighton and South Coast Railway*, 5 Ex. D. 190. Counsel for the plaintiffs submitted that the contract was one of indemnity; that the words of the clause were not such as to release the railway company from a claim by the plaintiffs themselves. He further contended that the damage did not arise out of or in connexion with the existence or user of the gangway, the real cause of the accident was the negligence of the defendants' servants. Counsel for the defendants replied.

MACKINNON, J., in giving judgment, referred to the facts, the relevant clause of the agreement of 1921, and to Counsel's contentions. There were three questions, each very difficult: (1) Did the undertaking to "indemnify" include the abandonment of any claim which the plaintiffs themselves might have against the company? (2) Did the words "all claims whatsoever" include a claim arising out of negligence by the servants of the railway company? (3) Did the damage in this case arise out of or in connexion with the user of the gangway? He was of opinion that the words in the second question were wide enough to cover claims arising out of negligence by the company's servants; he referred to *Rutter* v. *Palmer, supra*. He also thought that the damage was damage arising out of or in connexion with the user of the gangway. On the first question he had come to the conclusion that the plaintiffs were right, that the undertaking was only one to hold harmless against claims by third parties. On the preliminary point the decision was, therefore, in favour of the plaintiffs. Leave to appeal was given.

COUNSEL: For the plaintiffs, *Rayner Goddard*, K.C., and *E. H. C. Wethered*; for the defendants, *Wilfrid Lewis* and *J. A. Stainton*.

SOLICITORS: For the plaintiffs, *Calder Woods & Sandiford*, for *Wansbroughs, Robinson, Tayler & Taylor*, Bristol; for the defendants, *A. G. Hubbard*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Tallack *v.* **Tallack and Broekema.**

Lord Merrivale, P. 28th March and 8th April.

DIVORCE—HUSBAND'S PETITION FOR SETTLEMENT BY WIFE IN FAVOUR OF THE CHILDREN OF THE MARRIAGE—WIFE'S PROPERTY WITHOUT THE JURISDICTION—WIFE'S APPEARANCE UNDER PROTEST—DUTCH AND INTERNATIONAL LAW—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 191 (1).

The court has no power to make an order in rem *or* in personam *against a respondent wife domiciled in Holland in respect of her property outside the jurisdiction.*

This was a motion founded on a petition by a husband praying that his divorced wife be ordered to make a settlement out of her separate estate upon the children of the marriage. The parties were married at the British Consulate in Cairo in 1912. The husband's domicil of origin was English, the wife's Dutch. During their married life they had their domicil in England and lived there. On 17th October, 1924, the husband was granted a decree *nisi* on the ground of his wife's adultery with Gerard Willem Broekema, a Dutchman, against whom damages were assessed at £1,000. In July, 1925, the decree *nisi* was made absolute, and in August, 1925, the respondent and co-respondent were married. They took up their residence in Holland and had ever since been domiciled in Holland. The £1,000 damages were paid into court, that sum being provided by the respondent. The co-respondent was without means. The respondent had investments of a capital value of about £9,000, which yielded an income of about £500 a year. In April, 1926, the petitioner issued a summons for directions as to the disposal of the money paid into court in respect of damages. In March, 1926, the respondent had applied by summons for liberty to enter an appearance in the suit, notwithstanding decree absolute, so that she might be heard on the questions (1) of payment out of court of the damages, and (2) of access to the children of the marriage (a girl aged ten and a boy aged seven), and leave to enter an appearance so limited was granted. The respondent alleged that the £1,000 had been provided by her under an arrangement that it should be settled on the children. This the petitioner denied. In September, 1926, the husband filed this petition for a settlement to be made by the respondent alleging that the respondent possessed over £12,000, from which she derived an annual income of £500. The respondent entered an appearance and filed an answer to this petition, and this was relied upon by the petitioner as a submission to the decision by the court of the variety of claims made by the petitioner against the respondent. The respondent's answer set out the state of her means, the terms of a settlement made by her upon re-marriage and the existence of insurance policies obtained at her cost by way of help towards the education of the children. Before the registrar the respondent's counsel intimated that he appeared under protest and objected that the court had no jurisdiction to order a settlement of her property because she was domiciled in Holland and had property only in Holland. The registrar's report submitted (1) that the £1,000 in court should be paid out to the petitioner; (2) that the respondent be ordered to settle the sum of £100 per annum upon each of the children for life, premiums upon education policies to be paid out of such sums; and (3) that the respondent should pay the costs out of her separate estate. The petitioner accordingly gave notice of a motion for (*a*) an order in terms of the submission in the report as to the disposal of the £1,000 in court, and (*b*) in lieu of the submitted order for a settlement, an order upon the respondent to lodge in court within twenty-one days a sum of £4,000, and (*c*) an order upon the respondent to settle upon each of the children of the marriage the sum of £2,000 of this named sum of £4,000, with directions for disposal of the income. The petition to which the respondent appeared did not contain claims (*b*) and (*c*).

Lord MERRIVALE, P., after stating the facts, said: At the hearing of the motion counsel appeared for the petitioner to support his new application. Counsel appeared for the respondent to protest against the exercise of the jurisdiction over the respondent's property in Holland, and to resist the application for payment out of the £1,000 in court. On the respondent's behalf evidence of Dutch law was given in explanation of the effect of marriage in Holland upon property possessed by either spouse at the time of marriage, and as to a jurisdiction existent in Holland under which orders could be made against parents in respect of maintenance of children, special local committees being entrusted with this authority. Information was given on both sides as to the details and whereabouts of the respondent's property. Under the Dutch Code of Civil Procedure execution may not be had in Holland under foreign judgments except in cases expressly provided for by Netherlands law. Proceedings in other than the excepted cases must be taken anew before one of the local courts. No suggestion was made before me that the present case falls within any statutory exception. It was shown, however, that under Dutch law a citizen of the Netherlands who brings an action in England and fails on the merits, will be precluded from suing again in Holland in respect of the same alleged cause of action. It was also shown that notwithstanding appearance and defence in an action brought in England by a Dutch citizen, and judgment against him at the hearing, certain Netherlands tribunals have held themselves bound to refuse to enforce the judgment as such, and to leave the plaintiff, if he so desires, to proceed *de novo* in Holland to enforce his claim. As regards settlements of property between spouses and disputes between parents as to their obligations towards their children, the evidence was that no jurisdiction such as that invoked in the present case exists in Holland, and that the "Guardianship Councils" which are appointed by the State in each province to deal with such questions have power only to direct periodical payments for the maintenance and education of children.

The evidence given on the respondent's behalf satisfies me that as between Dutch spouses, whether during marriage or after divorce, no orders as to property, such as are here sought by the petitioner, would be made by any court in the Netherlands, that no judge or court there would or could under the Civil Code give effect in Holland to an order made here in terms of the petitioner's application. No evidence was given of the existence in England of any property of the respondent in respect of which an order of this court could be enforced. In replying upon the argument made on behalf of the respondent, counsel for the petitioner accepted the conclusion that no such property exists, and so far as regards the petitioner's claim for a settlement he relied upon a contention that the respondent had voluntarily submitted to the jurisdiction of the court by her entry of an unconditional appearance to the petition, that in a proceeding *in personam* such a submission binds the party to the acceptance of the eventual judgment of the court. The dispute which has arisen between the parties as to the sum of £1,000 paid into court under the decree as to damages has been inconveniently, and perhaps, not without intent, linked up by the petitioner's advisers for discussion and decision along with the question of settlement. I will dispose of it now. In view of the petitioner's evidence, of the findings of fact in the report, and of the situation of the children of the marriage the order proper to be made is that proposed by the registrar for payment out of the £1,000 in question to the petitioner.

The remaining questions upon the petitioner's motion depend upon the meaning and effect of the Supreme Court of Judicature (Consolidation) Act, 1925, s. 191, sub-s. (1), construed as part of the English law of divorce. To what extent can an English court, consistently with the general principles of

International Law which govern national jurisdictions—apart from submission by a defendant—exercise jurisdiction *in personam* over a defendant domiciled abroad so as to bind him or her by its decree, or establish a charge upon his or her property, or alter his or her proprietary rights in property outside the jurisdiction? Does the appearance of a foreign subject before the court for the purpose of disputing the jurisdiction empower the court to adjudicate upon claims against the defendant so as to bind him by a judgment *in personam*? Is the claim of the petitioner here a claim in an action *in personam*? If the court has and ought to exercise jurisdiction *in personam* in such a case, can it and ought it to assume power to alter the property in the defendant's assets not within its jurisdiction? The relevant sections of the statutes are the first matter for consideration. Their effect is perhaps somewhat misunderstood. It is probably correct to say that s. 45 of the Matrimonial Causes Act, 1857, neither created a cause of action nor set up a new right in equity. In 1857 and long afterwards, a delinquent wife, so long as she was *covert*, could not sue or be sued, nor was any equitable tribunal empowered to treat her matrimonial offence as founding any pecuniary demand or interest in her property. The power given to the court in divorce to re-distribute settled property of a wife because of a matrimonial offence was absolutely new. The jurisdiction was statutory and had no precedent in the ecclesiastical courts. It was anomalous, in that nothing like it had existed at common law or in equity. In some respects it was penal. One of the difficulties in the present case could not arise under the Act of 1857, because the respondent, being a domiciled Englishwoman by reason of her marriage, was manifestly subject to the jurisdiction of the court until after decree of the dissolution of marriage. A decree of dissolution was made under that Act upon the hearing of the petition. Decree *nisi* was introduced by the Act of 1860. The jurisdiction as to property remained a jurisdiction to be exercised when decree absolute was made, but the intervening period was available for any interlocutory proceedings which might be sanctioned. One unforeseen difficulty under the Act of 1857 had to be provided against, and was provided against under the Act of 1860 by a provision, s. 6, that, notwithstanding any new coverture, a divorced woman's indenture as to her property, if made pursuant to an order of the court, should be "deemed valid and effectual." Bearing in mind that the jurisdiction in divorce is a jurisdiction limited to England and Wales, and dependent on domicil, it cannot I think be said that the statutory authority invoked by the petitioner is on the face of it and necessarily an authority which extends to a woman—whether *feme sole* or *feme covert*—who is not in fact domiciled here. It is, perhaps, not immaterial on the question of construction, that the power which was conferred on the court by statute for service of process out of the Jurisdiction (Matrimonial Causes) Act, 1857, s. 42) is a power in relation to a petitioner in a suit and not to a proceeding such as is under consideration here.

As the property of a guilty wife which is subjected by the statutes in question to the jurisdiction of the court, it is sufficient to say generally that *primâ facie* what is dealt with is property of a woman domiciled in England subject by reason of her domicil to the jurisdiction of English tribunals.

Apart from any submission by the respondent to the jurisdiction sought to be invoked, and in the absence of express statutory provision which directs the exercise of the jurisdiction over a "respondent not domiciled in England or in respect of property beyond the jurisdiction, the power of the court to do that which is prayed by the petitioner, depends upon general principles, based in part at least on the comity of civilised states." Sir Albert Dicey, in his work "The Conflict of Laws," 4th ed., pp. 27-33, states two applicable principles, in these words:—General principle No. II: "English courts will not enforce a right otherwise duly acquired under the law of a foreign country . . . (c) Where the enforcement of such right involves interference with the authority of a foreign state, within the limits of its territory." General principle No. III: "The courts of any country have jurisdiction over (i.e., have a right to adjudicate upon) any matter with regard to which they can give an effective judgment, and have no jurisdiction over (i.e., have no right to adjudicate upon) any matter with regard to which they cannot give an effective judgment." Applying the first of the tests stated by Sir Albert Dicey, it seems to me clear that the property in Holland of the respondent, a married woman domiciled in Holland, cannot be partitioned by an English court without infringing the authority of the Netherlands law over the domestic affairs of families domiciled in Holland. To apply the second test formulated by Sir Albert Dicey, this question must be answered: Can this court give an effective judgment as to the respondent's property so as to bind the property? It is not clear that the judicial tribunals of the Netherlands are able to give effect at all to judgments of foreign courts, even in personal actions, against defendants living in Holland. But, having regard to the terms of the Civil Code, and the evidence of Dr. Bisschop, I am satisfied that a decree of this court, purporting to partition the property of the respondent, would be an idle and wholly ineffectual process. Reference may, perhaps, be usefully made on this part of the matter to the case *Sirdar Gurdyal Singh* v. *The Rajah of Faridkote*, 1894, A.C. 670.

The application of the petitioner for an order for the payment into court was used as a basis of an argument that, even if a decree here for a settlement of the respondent's property would be ineffectual in Holland, an order upon her for payment into court of a sum of money, with a view to an order later for a settlement, would come within the description of a judgment *in personam*, and ought therefore to be made. The respondent, it was said, has appeared and is subject to a personal judgment: such a judgment should be granted *ex debito justitiæ*, even though she may not obey it, and no execution upon it may be obtainable. This contention fails on various grounds. The prayer of the petition as filed set forth no cause of action which would found an action *in personam* properly so called: see *Municipal Council of Sydney* v. *Bull*, 1909, 1 K.B. 7. The respondent's appearance to this petition was not an appearance to meet the present claim. I am not persuaded that an appearance to such a petition as the present, qualified at all stages of the case by a distinct and reasoned denial of the existence of jurisdiction, could, with propriety, be regarded as a submission to the exercise of the jurisdiction so denied. I am satisfied that the proposed interlocutory order would not be enforced in Holland. I was referred, by way of authority, to cases in this court where jurisdiction undoubtedly existed: *Marsh* v. *Marsh and Palumbo*, 1867, L.R, 1 P. & D. 440; *Ponsonby* v. *Ponsonby*, 1884, 9 P.D. 122; *Noel* v. *Noel*, 1885, 10 P.D. 179, and *Loraine* v. *Loraine and Murphy*, 1912, P. 222 [C.A.]. Such cases throw no light on the questions really in issue. There is some guidance perhaps in some old authorities where, with regard to disputed jurisdiction, the principle was discussed before the existing rules as to jurisdiction were formulated. In *Carteret* v. *Petty*, 2 Swanston 324, a defendant resident in Ireland, who appeared before the Court of Chancery, and demurred to the jurisdiction, was ordered to answer a bill for an account for waste committed in Ireland, because "wheresoever the defendant may by personal coercion be compelled to perform the act decreed, there after answer put in the court shall proceed to a decree." In *Foster* v. *Vassall*, 3 Atkyns 587, the same ground is stated in respect of suits in equity as to matters outside the jurisdiction, in these words: "As the defendant is here the courts do *agere in personam* and may by compulsion on the person and process of the court compel him to do justice." Lord Mansfield, in *Mostyn* v. *Fabrigas*, 1 Cowper 161, drawing the distinction as regards presence and absence of jurisdiction and contrasting

actions for personal wrongs and actions in respect of property abroad—in that case realty—used these words: "The substantial distinction is where the proceeding is *in rem* and where the effect of the judgment cannot be had if it"—that is the proceeding—"is laid in a wrong place." The compulsory process referred to in the Chancery cases is not available here at the instance of the petitioner. The respondent is beyond its reach. Nor has she appeared in a suit so framed with regard to a personal cause of action that, after judgment, attachment would be the penalty of default of obedience. I may add this: I have purposely refrained from consideration of the proper order for settlement if such an order could properly be made.

It was ultimately urged on the petitioner's behalf, that *ex debito justitiæ* some order ought to be made on the prayer of the motion with its amended claim, so as to enable the petitioner to take proceedings at his own risk in Holland; and, alternatively, it was submitted, that no final judgment adverse to the petitioner's claim should be made, in case hereafter he may find the respondent possessed of property within the jurisdiction. To the first submission I am unable to accede. As to the second, any inchoate rights the petitioner may have under the statute will be sufficiently considered if I limit the operative order of the court to that part of the registrar's report which relates to the disposal of the damages, and as to the rest of the petition, declare that in absence of evidence of the existence within the jurisdiction of any property of the respondent subject to be dealt with thereunder, the court makes no order. The order to be drawn up will be framed accordingly.

COUNSEL: For the petitioner, *Robert Ritson*; for the respondent, *Cotes Preedy*, K.C., and *C. C. Trotter*. *Dr. Bisschop* gave expert evidence on Dutch law on behalf of the respondent.

SOLICITORS: *Pearce and Nicholls*; *T. D. Jones & Co.*

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.]

Societies.

The Law Society—Provincial Meeting.

We are informed by the Secretary of The Law Society (Mr. E. R. Cook) that the Council have accepted an invitation from the Sheffield District Incorporated Law Society to hold the provincial meeting this year in Sheffield, and that it will accordingly be held in that city on Tuesday and Wednesday, the 27th and 28th September next. The proceedings will, it is expected, be as follows:—

Monday, the 26th September.—Visitors will arrive in Sheffield, and the Lord Mayor of Sheffield will give a reception at the Town Hall in the evening.

Tuesday, the 27th September.—Members will meet in the council-chamber of the Town Hall at 10.30 a.m. The President of the Law Society will then deliver his address. This will be followed by the reading and discussion of papers contributed by members of the society. The meeting will adjourn from 1.30 to 2.30 for luncheon, and will close at 4.30. In the evening there will be a banquet at the Royal Victoria Hotel. Tickets for the banquet (£1 10s. each inclusive) can be obtained from the Honorary Secretary of the Sheffield District Incorporated Law Society on or before the 3rd September.

Wednesday, the 28th September.—The meeting will be resumed at 11 a.m., when the reading and discussion of papers will be continued until 1.30, when the meeting will close. In the afternoon arrangements are being made for visitors to inspect various works and places of interest in Sheffield and district, and the Vice-Chancellor of the University will entertain visitors to tea at the University. For the evening, seats are being reserved for visitors at the Lyceum Theatre.

The annual general meeting of the Solicitors' Benevolent Association will be held in the council-chamber of the Town Hall, on Wednesday, 28th September, at 10.15 a.m.

Thursday, the 29th September.—There will be excursions to various places of interest in Yorkshire, Derbyshire and the Dukeries. Particulars will be given in the detailed programme.

Members attending the meeting will have free admission during the visit to several clubs and golf links in the neighbourhood.

Each member will be entitled to take a lady to the above entertainments and excursions (but not to the banquet).

Members proposing to attend the meeting are asked to signify their intention, on or before the 15th August, to Mr. C. Stanley Coombe, the Honorary Secretary of the Sheffield District Incorporated Law Society, at 6, Paradise-square, Sheffield, stating whether they will be accompanied by a lady.

The Council will be glad to receive communications from members willing to read papers at the meeting.

Should any member contemplate favouring the Council with a paper, he is asked to communicate the subject of it to the Secretary on or before the 18th July. The Council will then consider the subjects proposed, and select such as they consider are the most suitable for discussion at the meeting, intimating their opinion to members in time to enable them to prepare their papers.

Those members whose papers are not among those selected may, nevertheless, prepare and submit them, and they will be read and discussed should the time at the disposal of the meeting suffice.

Subject to the control of the President of the Law Society, each member attending the meeting will be at liberty to speak and vote upon any matter under discussion, but all resolutions expressive of the opinions of the meeting will be framed in the form of recommendations or requests to the Council to take the subjects of such resolution into their consideration.

Special attention is called to the request that members will notify the Honorary Secretary of the Sheffield District Incorporated Law Society of their intention to attend the meeting on or before 15th August next, in order that programmes may be sent to them.

Banquet by The Lord Mayor

TO

His Majesty's Judges.

(BY OUR SPECIAL REPRESENTATIVE.)

The Lord Mayor, who was accompanied by the Lady Mayoress and the Sheriffs, presided at the annual banquet to His Majesty's Judges at the Mansion House, on Friday, the 17th inst. Amongst the distinguished company were the Lord Chancellor and Viscountess Cave, Lord Chief Justice and Lady Hewart, the Master of the Rolls and Lady Hanworth, Lord and Lady Wrenbury, Lord Justice Bankes and Lady Bankes, Lord Justice Sargant and Lady Sargant, R.R.C., J.P., Lord Justice Scrutton and Lady Scrutton, Lord Justice Atkin and Lady Atkin, Mr. Justice Eve and Lady Eve, Mr. Justice McCardie, Mr. Justice Tomlin and Lady Tomlin, Mr. Justice Branson and Lady Branson, Mr. Justice MacKinnon, Mr. Justice Wright, Mr. Justice Clauson and Lady Clauson, Lady Finlay, Mr. Justice Acton and Lady Acton, Mr. Justice Swift, Mr. Justice Bateson and Miss Bateson, Sir H. F. Dickens (Common Serjeant), Lord Aschcombe, C.B. (Lord Lieutenant of Surrey), Sir Adrian Knox, K.C.M.G. (Chief Justice of Australia), and Lady Knox, Sir Lancelot Sanderson, K.C. (late Chief Justice of Calcutta), Sir Jacob Barth (Chief Justice of Kenya), Sir Dawson Miller (Chief Justice of Patria) and Lady Miller, Mr. Justice Hodgins (Ontario) and Mrs. Hodgins, Mr. Justice C. G. Spencer (Madras), Mr. Justice Mirza A. A. Khan (Bombay), Mr. Justice Stratford (South Africa), Mr. Justice Watermeyer (South Africa), Mr. Justice de Villiers (South Africa), Mr. Justice David (Straits Settlements), Mr. Justice Tindall (South Africa), Mr. Justice Jackman (Barbados), Mr. Justice Damilos (Allahabad), Mr. Justice Chotzner (Calcutta), Mr. Justice Fawcett (Bombay), Mr. Justice Kemp (Bombay) and Mrs. Kemp, Mr. Justice Devadoss (Madras) and Mrs. Devadoss, Mr. Justice Van der Reit (Cape Province), Lord Sinha, K.C.S.I., Sir Charles Biron (Chief Metropolitan Magistrate), Mr. J. B. Sandbach (Metropolitan Magistrate) and Mrs. Sandbach, Mr. J. Radcliffe Cousins (Metropolitan Magistrate) and Mrs. Cousins, Mr. E. C. P. Boyd (Metropolitan Magistrate) and Mrs. Boyd, Mr. W. H. Oulton (Metropolitan Magistrate) and Mrs. Oulton, Mr. J. Sharpe (Metropolitan Magistrate), His Honour Judge Shewell Cooper and Miss Shewell Cooper, Master Sir G. H. Bonner (King's Remembrancer), Sir Douglas Hogg, K.C., M.P. (Attorney-General), Sir Edward Clarke, K.C. and Lady Clarke, Sir Thomas Hughes, K.C. (Chairman of the General Council of the Bar) and Lady Hughes, Dr. A. H. Coley (President Law Society) and Miss Dora Coley, Sir Hamar Greenwood, Bt., K.C., M.P. and Lady Greenwood, Mr. H. P. Macmillan, K.C. and Mrs. Macmillan, Sir Leslie Scott, K.C., M.P., Sir Claud Schuster, G.C.B., C.V.O., K.C. and Lady Schuster, Sir Henry Curtis-Bennett, K.C. and Lady Curtis-Bennett, Mr. Galbraith, K.C. and Miss Galbraith, Mr. J. D. Cassels, K.C., M.P. and Mrs. Cassels, Mr. W. B. Clode, K.C. (President of Railway Rates Tribunal) and Mrs. Clode, Sir Charles Neish, K.B.E., C.B. (Registrar of the

Privy Council) and Miss Neish, Mr. Macquisten, K.C., M.P. and Mrs. Macquisten, Mr. E. A. Harney, K.C., M.P. and Mrs. Harney, Sir Park Goff, K.C., M.P., Mr. Hawke, K.C., M.P. and Mrs. Hawke, Mr. Merriman, K.C., M.P. and Mrs. Merriman, Mr. Gerald Hurst, K.C., M.P. and Mrs. Hurst, Sir W. Greaves-Lord, K.C., M.P. and Lady Greaves-Lord, Mr. H. B. Grotrian, K.C., M.P. and Mrs. Grotrian, Sir Herbert Cunliffe, K.C., M.P. and Lady Cunliffe, Sir John Risley, K.C.M.G., K.C., C.B. (Colonial Office) and Lady Risley, Sir Guy Stephenson, C.B. (Assistant Director of Public Prosecutions) and Lady Stephenson, the Hon. Sir Malcolm Macnaghten, K.B.E., K.C., M.P. and Lady Macnaghten, Sir E. Hume-Williams, Bt., K.C., M.P., Sir Herbert Slesser, K.C., M.P. and Lady Slesser, Sir Henry Cautley, Bt., K.C., M.P., Sir E. Tindal Atkinson, K.C. (Railway and Canal Commission) and Lady Atkinson, Sir Travers Humphreys and Lady Humphreys, Sir Herbert Austin (Clerk of Central Criminal Court) and Lady Austin, Sir Herbert Gibson, Bt., Mr. A. F. I. Pickford, B.A. (City Solicitor), Mr. A. C. Stanley Stone (Master of City of London Solicitors' Company) and Mr. Wilfrid Dell (Registrar Mayors' and City of London Court).

The LORD MAYOR proposed the health of the Lord Chancellor.

The LORD CHANCELLOR, in responding, said he valued more than he could say the unfailing respect and personal kindness he had always received from the City of London. It had been his custom at these gatherings to give an account of the state of business in the courts. He was glad that on the present occasion he had nothing that was not encouraging to say with regard to it. That which concerned the crystallised commonsense which was called the common law he would leave to the Lord Chief Justice; but in regard to the Chancery Division, which a hundred years ago was a by-word of delay, he might state that it was to-day so prompt that it more frequently happened that the judge tried to hurry up the litigant who was getting ready for the trial of his case than that the litigant had to endeavour to speed up the judge. The experiment of appointing a third judge of the Probate, Divorce and Admiralty Division at the urgent desire of some of the great City shipping firms, had proved a great success, and he had no longer from time to time to break the heart of the Lord Chief Justice by authorising Lord Merrivale to borrow one of his judges to try divorce cases. The Court of Appeal, the Master of the Rolls would know, was well abreast of its work. It was only in the Judicial Committee that, owing to the number of cases to be heard, and the number of judges at its disposal, it was sometimes found difficult to get through the work, and he might have, before long, to ask Parliament to strengthen the number for the purpose of Indian appeals. With regard to legislation connected with the law, there was just now a time of rest. During the last few years, owing to the Conveyancing Acts, in which they all felt so much interest, for some reason the pace of legal legislation was certainly rather rapid. But to-day it was decidedly going down, and it was in a quieter atmosphere that he was endeavouring just now to secure an amendment of the law relating to companies. In that connexion he wished to take the opportunity of very cordially thanking those business men and lawyers connected with the City of London who had given him so much valuable advice and so much help. With regard to the future he knew there were certain matters which would need attention, and he was constantly having his conscience awakened by deputations from some of the great City societies and firms. He had received an admirable report from the committee on the subject of arbitration which interested the lawyers, and he hoped next year to submit to Parliament a proposal for giving effect to the report. On that question, sometimes a pressing question, of proceedings against the Crown, he had obtained from the committee over which the Lord Chief Justice presided, a draft of the Bill for altering the form of those proceedings, and the Government were carefully considering whether and to what extent they should ask Parliament to accept the provisions of that Bill. It sometimes happened that a person who had been disappointed or was in some way dissatisfied with litigation in which he had been engaged, lost his temper and made an attack on the impartiality of a judge. He (the Lord Chancellor) did not think that any attack on the impartiality of judges cut much ice. English people had not much sympathy with the cricketer who, when he was bowled or caught out, turned on the umpire, and he thought that they were too well assured of the independence and fair-mindedness of the judges to be moved by an angry speech or an angry letter directed against them. He remembered the words of Lord Mansfield when, in giving judgment, he said: "I will not do that which my conscience tells me is wrong upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels." Those words were well worth remembering. It was, he believed, in their spirit that justice was being and would continue to be done.

The LORD MAYOR proposed the toast of "His Majesty's Judges." He said the supreme confidence in the judges which the nation entertained would never be alienated or withdrawn. He most heartily welcomed the overseas judges who were present. He had lately seen a statement in an important newspaper to the effect that ligitation had been dwindling during the last five years, and that it continued to do so. Assuming that to be the case, he congratulated the judges on the greater leisure they would now enjoy, but sympathised with the Bar and the legal profession generally on that—perhaps only temporary—curtailment of their occupations.

THE LORD CHIEF JUSTICE responded, observing that the judges had but one face for friends or enemies, if enemies they had, for wisdom or folly, for truth or error, they judged all impartially, vigilantly and fearlessly. They continued to be content with the admiration in which they were universally held, and it might be that, as two of the worst enemies of representative institutions became more and more active—he meant, on the one hand, a mysterious but diligent bureaucracy, and on the other hand an increasingly commercialised press—public confidence was not likely to be diminished in the impartiality, the integrity, and the public and individual responsibility of His Majesty's judges. He had been invited, or maybe challenged, by the Lord Chancellor to give an account of the state of business in the King's Bench Division. They were told by the usual sources of misrepresentation that litigation had fallen off, that the King's Bench Division was not well up with its work, and that there was a dreadful state of arrears. The thing was perfectly simple. Those who talked and wrote to that effect did a simple sum in subtraction. They looked at the number of cases at the beginning of the term and at the number at the end. Then they did a simple sum in arithmetic, and gave the product as the work done. But the calculation, amongst other things, omitted to take notice of one important fact, namely, that cases were being entered every day. The actual fact was that the King's Bench was keeping pace, and more than keeping pace, with the number of cases as they were being entered for trial. The Lord Mayor had been good enough to express the hope that in the circumstances His Majesty's judges might enjoy a little more leisure. They thanked him for expressing that hope, but it was impossible that it should be fulfilled. The judges never had leisure. There would always be cases to be tried. He was told that the Divorce Division no longer borrowed judges from the King's Bench Division, but he ventured to say with all respect, in the language of the ancient philosophers, that the statement was at manifest variance with notorious facts. The Divorce Court used to borrow many judges from the King's Bench Division, and judges of the King's Bench Division would still be found in other places trying divorce cases which used to be tried in London. The King's Bench judges used to try dozens of cases—now they tried thousands.

Sir EDWARD CLARKE, K.C., proposed the toast "The Profession of the Law." He said that the law was not a profession in which the men engaged in it merely did their work and realised a pecuniary reward for so doing: it was really a great body of public servants. All its members, from the occupant of the woolsack to the articled clerk of the solicitor of a country town, were equally anxious and honest in the administration of the law, which secured the safety of the land and the liberties of the people. The judge could not carry out his arduous and very difficult duties unless there were advocates of sufficient learning to assist, and, if necessary, correct him, and of sufficient courage to maintain their clients' position and claim even before a reluctant or indifferent judge. And the advocate could not carry out his work properly unless he had been instructed by one who dealt honestly with the facts to be discussed and supplied him with the means of putting those facts honestly before the court. It could not be too well remembered that this great public service which the profession of the law rendered was one without which society would not be safe. We were at the moment in the presence of an extraordinary position on the Continent of Europe. He would couple with the toast the name of Sir Douglas Hogg, the Attorney-General, as the head of an organisation as great as any that existed in the world. He would ask the President of the Law Society to respond for the solicitor branch of the profession. The Law Society did great public service in dealing with the discipline of the members of the solicitor branch of the profession, and in rendering service to the community in other ways.

THE ATTORNEY-GENERAL, in returning thanks, on behalf of the Bar, said he had recently read a letter from an official of the Law Reform Association, which made an attack upon the administration of justice of this country. The writer

asserted that every forensic career left behind it a trail of wrecked fortunes, ruined homes, bitterness and misery. When he read that letter he reminded himself that there had been two occasions in English history when attempts had been made to get rid of the lawyers. The first of these was made by what was known as the "Mad Parliament," and it resulted immediately in civil war; and the second was made by the "Unlearned Parliament," which had been described in a well-known work as "an assembly which soon grew irksome to itself and ridiculous to the world"—a terrible warning to the Law Reform Association. He supposed that there was no one who had had any long experience who could not look back, not to fortunes wrecked, but to fortunes saved; not to homes wrecked, but to homes united: not to bitterness and misery, but to happiness and reputation restored. He remembered, since he had been in office, a deputation coming from America to this country in the hope that they might discover something of the secret which enabled us to administer justice with a certainty and swiftness which they admired and envied. The Bar were very proud of the judges—they remembered that the judges had gained their training and their experience in the ranks of their own profession, and he believed he could well say that there had never been a time when they had been prouder of the Bench than they were to-day. In its system of jurisprudence and the administration of justice, this country had established a standard of impartiality which all civilisations envied.

THE PRESIDENT OF THE LAW SOCIETY (Dr. A. H. Coley), responding on behalf of the solicitor branch of the profession, claimed for the solicitors that they served the community, not only in their own interest, but in that of the people at large. In this connection he might mention the services rendered by them to poor suitors under the Poor Persons Procedure Rules; with regard to which a system had been developed which, it was hoped, would be beneficial to those for whose benefit it was intended.

The remaining toasts were "The Court of Aldermen and the Sheriffs," proposed by The Master of the Rolls, Aldermen Sir David Burnett and Mr. Sheriff Vincent returning thanks; and "The Lord Mayor and Lady Mayoress," proposed by The Lord Chancellor, The Lord Mayor responding.

The Insurance World.

THE LEGAL & GENERAL ASSURANCE SOCIETY, LTD.

At the annual general meeting of the Legal & General Assurance Society, Limited, held recently, the 90th annual report since the establishment of the Society, was submitted, and it is interesting to note that 9,009 policies for £6,243,349 has been issued in the year, of which £267,934 had been re-assured, whilst the net new sums assured retained by the Society amounted to £5,975,415. The gross new premiums were £375,888, or less re-assurances £365,126 net, and the total net premium income (life) amounted to £1,689,462. The total net life claims amounted to £737,215, including £110,398, as bonus additions, caused by 340 deaths and 738 policies matured. The total net claims by death amounted to £487,783. The total numer of life policies in force at the end of the year was 74,267, assuring with bonus additions, £50,219,752, and deferred annuities of £311,950 per annum. The total funds, including the investment reserve fund, had increased during the year by the sum of £1,386,698, and amounted to £19,089,356. Omitting the investments in reversions, the funds yielded an average net rate of £4 11s. 5 per cent. interest. The assets included £199,591 invested in, and £8,627 lent on mortgage of real and personal property, which had been recently investigated by the directors, and the result of such investigation proved satisfactory.

The total net premium income in the fire and accident funds amounted to £240,466, representing an increase of £24,566 over that for 1925.

The total assets of the Society amounted to £19,370,443.

A bonus dividend of 6s. per share, free of income tax, was recommended for the year ending 31st December, 1926, in addition to the dividend for that year paid on the 1st July, 1926.

The report also recommended that dividends be paid half-yearly in future, and that an interim dividend of 3s. per share free of income tax, be paid on 1st January, 1928, in respect of the year ending 31st December, 1927.

It was further recommended that the uncalled capital be reduced by 4s. per share by application of £40,000 from profit and loss account, making the shares £5 each with £1 paid.

THE EAGLE STAR & BRITISH DOMINIONS INSURANCE CO., LTD.

The origin of this company appears to be that in 1807 a group of merchants, bankers, and traders in the City met and decided to form an insurance company for their mutual protection, the capital being fixed at £2,000,000,000, of which 10 per cent. was to be raised forthwith.

It will be within the recollection of many of our readers that this company introduced policies to afford cover against zeppelin raids and the explosion of munition factories during the war, whilst their "War Loan Policies" enabled thousands of persons to contribute financial aid to the country to the extent of several millions of pounds, which may not otherwise have been available.

Unfortunately, the time at our disposal, and the heavy demand on our space in this issue, precludes our giving more than a passing reference to the interesting figures disclosed by a perusal of the annual report and balance sheet; but, perhaps, it will be sufficient for the moment to say that the paid-up capital and reserves amount to no less than £3,990,485, apart from life funds and sums in hand for claims admitted, etc., and that, after debiting the premium reserve of £1,263,182 (80 per cent. of the marine and 40 per cent. of the fire and accident premiums), a balance of £2,527,303 remains.

THE EQUITY AND LAW LIFE SOCIETY.

We have had an opportunity of perusing the Annual Report of this Society, and its more intimate business association with professional men should make the figures of interest to legal rather than commercial and industrial men. The number of new policies issued during the year was 432, representing new sums assured amounting to £1,037,285, covered by annual premiums of £25,320, single premiums aggregating £203,114. The average sum assured was a smaller figure than in the previous year by £500. The premium income amounted to £601,506 and, making allowances for the varying amounts of single premiums, show a steady growth of the normal premium income. The revenue from investments increased considerably and the funds (excluding reversions) yielded £5 1s. 8d. per cent. net. On the other hand, claims by death amounted to £215,900 and claims by survivance, as represented, to £187,092, both of which figures are in excess of the previous year, whilst the amount paid for commission and the expenses of management have dropped considerably.

THE MUTUAL PROPERTY INSURANCE COMPANY.

The Mutual Property Insurance Company is of more than ordinary interest at the present time, having regard to the special departments it has created, the first of which concerns the business of house purchase, whilst the second relates to a free system of home nursing to policy-holders. We have only space to make a brief reference to the former. To policy-holders who have purchased property by instalments £1,250,000 has been advanced by the Company, which in other words represents the provision of housing accommodation for 2,800 families. We gather from the Annual Report that advances are now being made for this purpose at the rate of about a quarter of a million per annum, a feature which will be watched with interest by all interested in the housing question.

Office Requisites.

THE VALUE OF PERMANENT RECORDS.

Some time ago the City of London Solicitors' Company rendered a public service by drawing attention to the inferior character of the ink; this was only used in the emergency resulting from the war. We believe that this received no small amount of attention, with the result that improvements were effected, the matter being of so much importance from the point of view of the practising solicitor. It is of the utmost importance that legal and official documents which have to be kept for a great number of years should be permanent and unfaded.

It is important that old ribbons and carbon papers used, therefore, should be black and of the highest quality, made with an ink, the pigment of which consists mainly of black which is practically indestructible. It is claimed, that the typing, and copies from same will last as long as the paper upon which they are made. The best black ink record ribbons and carbon papers are made with carbon black with a slight addition of blue to make the colour of the writing more pleasant, carbon black by itself being somewhat brownish.

TIME-SAVING IN A SOLICITORS' OFFICE.

It has often been said that hundreds of pounds are lost every year in the office of the average solicitor through the omission to make the necessary entries of attendances, telephone calls and letters at the time. There are modern methods which perhaps partly solve this age-old problem and prevent

leakage in unrecorded entries. Any machine which enables the practitioner to increase his output of work, and his typist to produce considerably more typewritten matter as under the existing system without increasing the salary list is worthy of serious attention. It is claimed for the "Dictaphone" that by its use in the office draft bills of costs could always be up to date without loss of items or petty cash disbursements, correspondence can be dealt with as and when received whilst the solicitor is enabled to draft his briefs, notes of interviews, cases for counsel and lengthy documents with a speed and freedom of thought almost impossible where he has to rely entirely on dictation to a shorthand typist. Another advantage is that in the meantime his typist can turn out the draft on the typewriter, and the time taken up in writing shorthand notes can be used to greater advantage of transcription. Another advantage claimed for this machine is that accuracy of transcription can be guaranteed by its use, that as an added safeguard both the principal and typist can test the accuracy of the transcribed matter by listening to the reproduction which is not possible under the shorthand system.

Another dictating machine which makes similar claims is "The Ediphone," and both it seems are rapidly claiming the attention of professional and commercial firms alike.

ALL-WEATHER GOLF PRACTICE.

London can boast of what is probably the most unique golfing institution in the world, in the all-weather golf practice at Kensington. Golf enthusiasts of all ages and varying experience may be seen there industriously practising driving or approaching after a gruelling day in chambers or office. However busy one may be, London no longer affords any excuse for losing touch with your game. Altogether it represents an admirable idea, carried out perfectly, by which the "old stager" can enjoy his golf practice, and the novice (of any age) be initiated into the "royal and ancient game" at a spot barely ten minutes distance from Hyde Park Corner. It is well worth noting that practice here is quite independent of meteorological conditions, whilst after dark, huge electric lights enable business people of both sexes to practise or learn the game when the day's work is at an end.

THE DISTRESSED GENTLEFOLKS ASSOCIATION.

We should like to draw the attention of our readers generally to this excellent organisation which does a great deal of effective work quietly and unostentatiously. We can well understand how difficult it is to make an appeal sufficiently striking to enable people to realise the painful position of distressed gentlefolks, who, though in dire distress shrink from making their want known, and consequently do not get the assistance that would be readily granted if more publicity was possible. Cases submitted from time to time to this association show a sad record of monotonous lives accentuated by insufficient food and clothing and often accompanied by real hardship. The income of the association has unfortunately dropped during the past year by about £16,000, whilst £200 which the association had received annually for fifteen years from the private list of Queen Alexandra's Rose Fund has now been withdrawn by the committee. The association is therefore urgently in need of funds to meet many applications which have to be refused.

SIR WILLIAM BLACKSTONE, D.C.L.

We have received from Mr. J. F. E. Grundy, the fine art publisher, an excellent reproduction of the portrait of Sir William Blackstone, by Sir Joshua Reynolds, and now in the National Portrait Gallery in mezzotint, by Mr. G. P. James, the eminent engraver, of which we understand a limited edition of signed proofs, stamped by the Fine Art Trade Guild, is being issued at £1 4s. each. The British Museum is amongst the first list of subscribers. We think this portrait should make a fitting addition to the library, study or office of all those associated with the law.

In consequence of the heavy demand upon our space we have been reluctantly compelled to hold over the interesting lecture by Mr. Comyns Carr, K.C., and the Article (by Mr. Albert Lieck) "The Effect of the Great War on Criminal Legislation."
—ED., *Sol. J.*

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement, Wednesday, 29th June, 1927.

	Middle Price 22nd June	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	86	4	13	0	—		
Consols 2½%	53½xd	4	13	6	—		
War Loan 5% 1929-47	100⅛	4	19	6	4	19	6
War Loan 4½% 1925-45	95⅞	4	14	0	4	17	0
War Loan 4% (Tax free) 1929-42 ..	100⅝	3	19	6	3	19	6
Funding 4% Loan 1960-90	86⅛	4	13	0	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93	4	6	0	4	9	6
Conversion 4½% Loan 1940-44 ..	96	4	13	6	4	16	6
Conversion 3½% Loan 1961	75⅛	4	12	0	—		
Local Loans 3% Stock 1921 or after ..	53½	4	15	0	—		
Bank Stock	247	4	17	9	—		
India 4½% 1950-55	91⅛	4	19	0	5	2	0
India 3½%	69½	5	1	0	—		
India 3%	59½	5	1	0	—		
Sudan 4½% 1939-73	94	4	16	0	4	17	0
Sudan 4% 1974	85	4	15	0	4	18	6
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years) ..	81	3	14	0	4	12	0
Colonial Securities.							
Canada 3% 1938	83¾	3	12	0	4	18	6
Cape of Good Hope 4% 1916-36 ..	93	4	6	0	5	0	0
Cape of Good Hope 3½% 1929-49 ..	80	4	8	6	5	0	6
Commonwealth of Australia 5% 1945-75	98	5	2	0	5	2	0
Gold Coast 4½% 1956	93¾	4	16	0	4	18	0
Jamaica 4½% 1941-71	92¼	4	18	0	4	19	0
Natal 4% 1937	92¾	4	6	6	4	19	6
New South Wales 4½% 1935-45 ..	90	5	0	0	5	9	0
New South Wales 5% 1945-65	96¾	5	3	0	5	4	6
New Zealand 4½% 1945	95½	4	14	6	4	18	6
New Zealand 5% 1946	100½	5	0	0	5	0	0
Queensland 5% 1940-60	97⅜	5	2	6	5	4	0
South Africa 5% 1945-75	100½	5	0	0	5	0	0
S. Australia 5% 1945-75	96⅝	5	3	6	5	3	6
Tasmania 5% 1945-75	100½	4	19	6	5	1	0
Victoria 5% 1945-75	98½	5	2	0	5	3	6
W. Australia 5% 1945-75	99	5	1	0	5	3	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corpn.	61¾	4	18	0	—		
Birmingham 5% 1946-56	103	4	17	6	4	18	6
Cardiff 5% 1945-65	101¾	4	18	6	4	19	0
Croydon 3% 1940-60	69	4	7	6	5	0	0
Hull 3½% 1925-55	78½	4	9	6	5	0	0
Liverpool 3½% on or after 1942 at option of Corpn.	72¼	4	17	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52¾	4	15	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62½	4	16	0	—		
Manchester 3% on or after 1941 ..	63½	4	14	6	—		
Metropolitan Water Board 3% 'A' 1963-2003	63	4	15	0	4	16	0
Metropolitan Water Board 3% 'B' 1934-2003	64¾	4	12	6	4	15	0
Middlesex C. C. 3½% 1927-47	82½	4	5	6	4	17	6
Newcastle 3½% irredeemable	71xd	4	19	0	—		
Nottingham 3% irredeemable	61½	4	17	6	—		
Stockton 5% 1946-66	101½	4	18	6	4	19	6
Wolverhampton 5% 1946-56	101¼	4	19	0	4	19	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture ..	80¾	4	19	0	—		
Gt. Western Rly. 5% Rent Charge ..	99	5	1	0	—		
Gt. Western Rly. 5% Preference ..	93½	5	7	0	—		
L. North Eastern Rly. 4% Debenture..	74⅜xd	5	7	6	—		
L. North Eastern Rly. 4% Guaranteed	71¼	5	12	0	—		
L. North Eastern Rly. 4% 1st Preference	64¼	6	4	0	—		
L. Mid. & Scot. Rly. 4% Debenture ..	77¾	5	3	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed ..	76¼	5	5	0	—		
L. Mid. & Scot. Rly. 4% Preference ..	70⅞	5	13	0	—		
Southern Railway 4% Debenture ..	77¾	5	3	0	—		
Southern Railway 5% Guaranteed ..	97½	5	2	6	—		
Southern Railway 5% Preference ..	90¾	5	10	6	—		